S. HRG. 103-620

TOWARD A DISPOSABLE WORKFORCE: THE INCREASING USE OF "CONTINGENT" LABOR

Y 4.L 11/4:S.HRG.103-620

Toward a Disposable Workforce: The...

HEARING

BEFORE THE

SUBCOMMITTEE ON LABOR

OF THE

COMMITTEE ON LABOR AND HUMAN RESOURCES UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

ON

EXAMINING THE USE AND GROWTH OF A "CONTINGENT" WORK FORCE IN THE UNITED STATES, WHICH CONSISTS OF PART TIME, TEMPORARY, AND LEASED EMPLOYEES, INCLUDING INDEPENDENT CONTRACTORS, AND ITS IMPACT ON THE NATION'S STANDARD OF LIVING, PRODUCTIVITY AND COMPETITIVENESS

JUNE 15, 1993

Printed for the use of the Committee on Labor and Human Resources

SUPERINTENDENT OF DOCUMENTS
DEPOSITORY
OCT 26 1994
BOSTON PUBLIC LIBRARY
GOVERNMENT DOCUMENTS DEPARTMENT

U.S. GOVERNMENT PRINTING OFFICE

81-346 CC WASHINGTON : 1993

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-044662-7

S. HRG. 103-620

TOWARD A DISPOSABLE WORKFORCE: THE INCREASING USE OF "CONTINGENT" LABOR

.L 11/4: S. HRG. 103-620

d a Disposable Workforce: The...

HEARING

BEFORE THE

SUBCOMMITTEE ON LABOR

OF THE

COMMITTEE ON LABOR AND HUMAN RESOURCES UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

ON

EXAMINING THE USE AND GROWTH OF A "CONTINGENT" WORK FORCE IN THE UNITED STATES, WHICH CONSISTS OF PART TIME, TEMPORARY, AND LEASED EMPLOYEES, INCLUDING INDEPENDENT CONTRACTORS, AND ITS IMPACT ON THE NATION'S STANDARD OF LIVING, PRODUCTIVITY AND COMPETITIVENESS

JUNE 15, 1993

Printed for the use of the Committee on Labor and Human Resources

SUPERINTENDENT OF DOCUMENTS
DEPOSITORY
OCT 26 1994
BOSTON PUBLIC LIBRARY
GOVERNMENT DOCUMENTS DEPARTMENT

U.S. GOVERNMENT PRINTING OFFICE

81-346 CC WASHINGTON : 1993

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-044662-7

COMMITTEE ON LABOR AND HUMAN RESOURCES

EDWARD M. KENNEDY, Massachusetts, *Chairman*

CLAIBORNE PELL, Rhode Island
HOWARD M. METZENBAUM, Ohio
CHRISTOPHER J. DODD, Connecticut
PAUL SIMON, Illinois
TOM HARKIN, Iowa
BARBARA A. MIKULSKI, Maryland
JEFF BINGAMAN, New Mexico
PAUL D. WELLSTONE, Minnesota
HARRIS WOFFORD, Pennsylvania

NANCY LANDON KASSEBAUM, Kansas
JAMES M. JEFFORDS, Vermont
DAN COATS, Indiana
JUDD GREGG, New Hampshire
STROM THURMOND, South Carolina
ORRIN G. HATCH, Utah
DAVE DURENBERGER, Minnesota

NICK LITTLEFIELD, *Staff Director and Chief Counsel*
SUSAN K. HATTAN, *Minority Staff Director*

SUBCOMMITTEE ON LABOR

HOWARD M. METZENBAUM, Ohio, *Chairman*

TOM HARKIN, Iowa
CHRISTOPHER J. DODD, Connecticut
EDWARD M. KENNEDY, Massachusetts
PAUL D. WELLSTONE, Minnesota

ORRIN G. HATCH, Utah
NANCY LANDON KASSEBAUM, Kansas
JAMES M. JEFFORDS, Vermont
STROM THURMOND, South Carolina

GARY SLADMAN, *Chief Counsel and Staff Director*
ANN LABELLE, *Minority Counsel*

103

Y 4.L 11/4:S.HRG.103-620/
ERRATA-2
Toward a Disposable Workforce: The...

[ERRATA]

ERRATA

TOWARD A DISPOSABLE WORKFORCE: THE INCREASING USE OF "CONTINGENT" LABOR

The above referenced hearing held before the Senate Committee on Labor and Human Resources was printed with the designation of S. HRG. 103–620. That designation is correct.

However, S. HRG. 103–229 has been assigned to the Senate Committee on Appropriations entitled "Durable Medical Equipment".

SUPERINTENDENT OF DOCUMENTS
DEPOSITORY
JUL 7 1995
BOSTON PUBLIC LIBRARY
GOVERNMENT DOCUMENTS DEPARTMENT

CONTENTS

STATEMENTS

JUNE 15, 1993

	Page
Metzenbaum, Hon. Howard M., a U.S. Senator from the State of Ohio	1
Perkins, Wendy, Scottsdale, AZ, temporary employee and author of Temporarily Yours; Richard Delaney, Oakland, CA, international representative, Office and Professional Employees International Union; Jimmie Ruth Daughtrey, Nashville, TN, former employee, Honeywell Corp., and Michael D. Hobbs, New Canaan, CT, president, Hobbs, Inc., prepared statement	3
Crockett, Delores L., Washington, DC, acting Deputy Director, Women's Bureau, U.S. Department of Labor, accompanied by Karen Nussbaum, former director of Nine to Five; Eileen Appelbaum, associate research director, Economic Policy Institute, Washington, DC; Helen Axel, management research consultant, Lebanon, NJ; Mitchell S. Fromstein, president and CEO, Manpower Inc., Milwaukee, WI, and John R. Heneisen, Rome, GA, dean of student work, Berry College, and former president, National Association of Student Employment Administrators	22
Prepared statements:	
Ms. Crockett	24
Ms. Appelbaum	31
Ms. Axel	42

ADDITIONAL MATERIAL

Articles, publications, letters, etc.:	
Statements:	
Suzanne Smith, codirector of New Ways to Work	61
Ellen Bravo, executive director, 9to5, National Association of Working Women	64
Americans for Democratic Action, Inc.	66
John Sweeney, president, Service Employees International Union	69
Carlos Saladrigas, president, Vincam Human Resources	71
David Bucnis	78
Joe Roy Allen, Jr.	80
Douglas J. Benad, president, Ca-Ce-Len Mfg., Co., garment sewing contractor	80
William Reuben Storey	81
Janis B. Flynn	82
Harold Jones, president, Dantan, Inc.	82
Letter to Senator Metzenbaum, from Thomas W. Hawkins, Jr., June 16, 1993	83
Statement of Advocates for Flexible Employment	84
Letters to Senator Metzenbaum from:	
Jay Mazur, president, International Ladies Garment Workers Union, June 22, 1993	86
Samuel R. Sacco, executive vice president, National Association of Temporary Services, June 28, 1993	87
Stephen Over, executive director, Professional Ski Instructors of America, Inc., June 23, 1993	89
Statement of Carol A. Dean, Building Service Contractors Association International	90

TOWARD A DISPOSABLE WORK FORCE: THE INCREASING USE OF "CONTINGENT" LABOR

TUESDAY, JUNE 15, 1993

U.S. SENATE,
SUBCOMMITTEE ON LABOR,
OF THE COMMITTEE ON LABOR AND HUMAN RESOURCES,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:35 a.m., in room SD–430, Dirksen Senate Office Building, Senator Metzenbaum (chairman of the subcommittee) presiding.

Present: Senators Metzenbaum, Dodd, and Wellstone.

OPENING STATEMENT OF SENATOR METZENBAUM

Senator METZENBAUM. The hearing will come to order.

This morning the labor subcommittee convenes to hear testimony on the increasing use of so-called "contingent" labor. This trend has alarming implications for working men and women in this country, for our standard of living, and for our economy as a whole.

The so-called "contingent" work force consists of part-time, temporary, and leased employees, as well as independent contractors. It can include anyone who is not a full-time employee.

Of course, companies have always hired these workers to meet fluctuations in demand for their product or service. More recently, though, many companies have been hiring contingent workers to replace full-time workers as part of a restructuring effort aimed at cutting labor and health care costs.

These companies are cutting much more than just wages and benefits. They are cutting job security. They are cutting worker training. They are cutting opportunities for advancement. In short, they are cutting the heart out of the American work force.

There are 34 million contingent workers today—over one quarter of our work force—and some say they may outnumber full-time workers by the end of the decade.

As this chart shows, in the last decade, the temporary help industry has grown three times faster than the work force as a whole. Only half of the new jobs created in the past year have been full-time jobs. In a recent article, Time magazine suggested that "This is the most important trend in business today, and it is fundamentally changing the relationship between Americans and their jobs."

Frankly, it is an insidious development. It isn't something that you see all of a sudden. It does not come crashing through to you.

It just slowly develops, and meanwhile the permanent work force is cut, and the temporary/part-time work force continues to grow.

Now, it is true that some workers want temporary or part-time jobs, but a growing number of Americans who want full-time jobs cannot find them. Instead, as the second chart shows, they find themselves earning 25 to 50 percent less in wages, leaving many of their families below the poverty line. They typically find themselves without employer-provided health care or pension benefits. These workers also frequently find themselves without the protections of Federal labor and civil rights laws like OSHA, Title VII, the National Labor Relations Act, and our minimum wage law.

The recently-enacted Family and Medical Leave Act, for example, only covers workers who are employed 25 or more hours per week. And many contingent workers cannot qualify for unemployment insurance when they are out of work. Federal and State laws provide a broad protective umbrella for American workers, but contingent workers, a full quarter of our work force, are getting the short end of the stick.

This trend also has serious long-term implications for the United States economy. President Clinton says we need a high wage, high productivity strategy to ensure U.S. competitiveness into the next century. That strategy is dependent upon long-term investment in workers' skills. But the increasing use of contingent labor, a central feature of a low wage strategy, takes us in the opposite direction. When companies replace full-time employees with disposable workers to cut labor costs, these costs do not simply disappear; they are borne by workers and by taxpayers. The more "contingent" our work force becomes, the more dependent workers will be on Government programs for income assistance, health care, and retirement income.

Ultimately, I am very concerned that if this trend continues, we may wake up one morning to find that the American dream has slipped away. As we will hear today, for many workers, that morning has already arrived.

Our witnesses today are on two different panels. The committee has a standing rule of 5 minutes for each witness. The entire statements of witnesses will be included in the record.

Our first panel includes Wendy Perkins, from Scottsdale, AZ, a temporary employee and author of a book called Temporarily Yours; Richard Delaney, of Oakland, CA, international representative of the Office and Professional Employees International Union; Jimmie Ruth Daughtrey, Nashville, TN, a former employee of Honeywell Corporation; and Michael D. Hobbs, of New Canaan, CT, president of Hobbs, Inc.

Wendy, please proceed.

STATEMENTS OF WENDY PERKINS, SCOTTSDALE, AZ, TEMPORARY EMPLOYEE AND AUTHOR OF TEMPORARILY YOURS; RICHARD DELANEY, OAKLAND, CA, INTERNATIONAL REPRESENTATIVE, OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION; JIMMIE RUTH DAUGHTREY, NASHVILLE, TN, FORMER EMPLOYEE, HONEYWELL CORP., AND MICHAEL D. HOBBS, NEW CANAAN, CT, PRESIDENT, HOBBS, INC.

Ms. PERKINS. Good morning, Senator Metzenbaum.

Thank you for inviting me this morning to discuss my experiences as a member of the contingent work force.

In the late 1980's, I lost my job as a stockbroker in Beverly Hills, CA and begin to look for another full-time job, but I was not able to find one in securities or in marketing management, and I started temping out of necessity. I had no secretarial skills at the time and became a temp receptionist for $6 an hour, with no benefits, and only 20 to 30 work hours weekly. This was not enough money to meet my basic monthly expenses, so I worked an additional 20 hours per week evenings and weekends at a retail store. After reducing my expenses by selling my car, I travelled to temp assignments, sometimes 30 miles away, via the bus system.

I began housesitting to provide myself with lodging when my temp income was erratic. I had no permanent address as a temp. I lost 90 percent of my belongings when I couldn't afford to pay off 7 months of storage fees, a low point in my life.

Temp work came with a price. Eventually, I got an apartment, but I was constantly stressed out, worrying how I was going to pay my rent and eat. Sometimes I skipped meals when money was low. It was a lesson in survival, perseverance, negotiating my monetary worth daily in the workplace, and a lot of faith in divine guidance to keep me going as a single, self-supporting woman.

I was determined to turn personal misfortune into my advantage and to create something permanent for temps and displaced workers. Therefore, I wrote, published and promoted my book, Temporarily Yours, documenting many cases of temp abuse.

I learned computers and worked as an executive temp secretary and later as a legal temp secretary. I temped for Chubb Insurance Co., Security Pacific Bank, Kaufman & Broad, Sothebey's, Chase Manhattan Bank, and MGM Studios. I worked assignment to assignment, agency to agency, living from house to house. I signed up with multiple agencies, just to keep working at all times. I chose assignments which paid the most money. It is lonely to temp, and friends and support systems were nonexistent. After all, I was "only temporary," so why invest the time getting to know me?

Agencies' loyalty is to their permanent clients, not their expendable work force. I was in a car accident on a temp assignment, but when I called the temp agency from the hospital to say a truck had hit our car, the agency counselor hung up on me after the first phone call. When I called again, the counselor said, "I know, and it was your fault. You are probably scamming to collect workers' comp." I went through years of therapy—chiropractors, sports doctors, and acupuncturists. I did collect money from the agency's insurance company 3 years later, but I never totally recovered. I suffered from temporomandibular joint, TMJ, in 1989 as a result of

that accident. This experience was another "blame it on the temp" syndrome I had heard so many times before.

Temps are in every facet of business today, working as temp nurses, engineers, lawyers, paralegals, UPS drivers, librarians, marketeers, talk show hosts, and yes, even as CEOs.

I found that the larger temp agencies pay the lowest hourly rates. They say they have great benefits, yet look at the number of hours it takes to achieve them. It takes 1,200 work hours to obtain a paid holiday through Manpower—160 work days based on 7.5 hours per day—or 5.3 times the rate of a 30-day qualifying period which is typical for full-timers.

I signed up with smaller agencies so as to put more money in my pocket. Large agencies have gimmicks, like "employee of the month" awards. The bottom line that counts for the temp is money. Most temps have no career advancement and are controlled by "ceilings" at temp agencies. But there is no "ceiling" on the temp agency CEO's pay.

I found temp work to be highly stressful, with no opportunity for professional career advancement. There is no recourse for a temp who is harassed or discriminated against in any way. The agency quickly tells the temp worker her job is finished and brands her as a troublemaker, not worthy of choice assignments. Temp workers are not protected by Federal laws. After one client law firm fired me for taking a lunch break during my 8-hour shift, the temp agency told me, "Temps have no rights, and forget about the incident."

I worked from week to week with no benefits, no sick day, no holiday pay until hours accumulated, no health care, and no pension.

We need accumulation of benefits from one temp agency and part-time job to the next. Temps will never accumulate their benefits if they work under several agencies to accumulate a 40-hour work week.

Temps are an invisible work force with the toughest jobs in America and the least amount of respect. They are unrepresented in collective bargaining power to seek greater income stability and work benefits.

Corporate America has no loyalty to or respect for its work force. I have been approached on a new assignment with, "Hey, you, we ordered you today." to which I replied, "My name is Wendy, and I am not a hamburger." Management gets rewarded for cost control of the labor force, early retirees, and eliminating full-time jobs to create contingent jobs. They save 30 to 50 percent for not providing benefits to their workers. Have we created a modern-day slave or a flexible, highly skilled worker? Corporations know they can get around Hillary's health care plan, wrongful termination lawsuits, the Disabilities Act, and Federal fair labor laws by hiring contingent workers. Will we create a new global temp worker if the North American Free Trade Agreement passes?

Temp agencies and corporations must share in the cost of benefits for all contingent workers. If not, you will see them figure out ways to keep workers below qualifying work hours. Let's make a permanent advancement for all contingent workers with enforced legislation on health care, pension, sick days, holiday pay, and vacation pay.

First, create and enforce legislation so both agencies and corporations invest in their temps and part-timers with accumulation from one job or agency to another.

Second, update U.S. Department of Labor statistics on temp workers and pay scales. They are categorized by each industry, and most Department of Labor figures underestimate the number of contingent workers.

Contingent workers contribute thousands of hours of service to the profits of corporate America and the gross national product. Such fair and equitable treatment of this growing work force will result in increased loyalty and productivity, and that is a good reason to do it. However, as Donna Guy, a Phoenix part-timer, states, "The best reason is that it is the right thing to do."

One thing I learned from my own temp experiences is that in today's business world, nothing and no one is permanent.

Senator METZENBAUM. Thank you very much. I permitted you to go over because I knew you wanted to finish your statement, and I'll have some questions for you. We do appreciate your comments.

Mr. Richard Delaney, we are happy to hear from you, sir.

Mr. DELANEY. Thank you, Senator.

I am a representative of the Office and Professional Employees International Union, AFL–CIO. I am here on behalf of the several thousand members of OPEIU, as well as millions of unorganized office and professional workers who are being trapped in this growing contingent work force. I am also here on behalf of the workers for the Bank of America in California, who wish to speak out against the injustices of a recent B of A restructuring, resulting in the forced transfer of thousands of bank employees into part-time and temporary jobs with no job security and little or no benefits. These B of A workers would like to be here today, but cannot because of the very real, legitimate fear of retaliation and job loss for wanting to simply speak the truth about their own experience. It is a sorry comment on the quality of the rights these workers ostensibly possess under Federal labor law that they cannot even appear before this subcommittee without substantial risk of reprisal and job loss.

We are witnessing today a fundamental restructuring of the jobs of American workers. The stability and security of full-time permanent employment is fast becoming replaced by the vagaries, insecurities, and economic degradation of part-time and temporary employment. This is not a cyclical phenomenon. It is a structural trend which cuts through all industries and both private and public sector employment. The so-called "contingency work force" is a rapidly growing second-class work force of Americans involuntarily relegated to jobs with no security, little or no benefits, and no dignity. These new jobs perform the same work as the old, full-time permanent jobs, but now the jobholders are simply disposable workers, with little attachment to the work, who can be and are readily discarded at the whim of the employer.

Employers tout the current restructuring and resort to the contingent work force model of doing business as necessary to cut costs, increase flexibility and gain competitive advantage in a global economy—the same buzzwords always used to cover up workplace injustices.

But what is the real story? The truth is the claimed benefits of a work force transformation to part-time and temporary employment are illusory and spurious. In realty, the new restructuring is an elaborate and cynical shell game in which American workers are used as pawns by employers for temporary profit gain, while the risk of job insecurity and benefit loss is transferred to the workers, their families, and ultimately to the Government.

The long-term effects of the contingent work force shell game are dramatic for American workers, their families, and our economy. These workers are far more vulnerable to fluctuations in the economy. They have no savings to rely upon in the event of job loss; they are without health or retirement benefits, and they are afforded no training which might quality them for alternative employment opportunities.

The burden of supporting the new contingent work force even when employed will fall squarely on the shoulders of Government. The ultimate result of the increasing tax burdens of an expanding social welfare safety net for an untrained contingent work force will be loss of competitive advantage and more structural unemployment and underemployment. In short, the new contingent work force restructuring promises to fuel a continual spiral of economic decline, particularly in our urban areas where the so-called "flexibility" of a contingent work force is most available to employers due to high unemployment and easy victimization of workers desperate for jobs.

That this restructuring is not a necessary element of economic survival is apparent with the Bank of America restructuring shell game in California. In 1992, B of A realized profits of over $1.5 billion. The bank's CEO earned a salary of $1.2 million with an accumulation of stock options from 1987 valued at $12 million.

How did Bank of America respond to this unprecedented financial success? The bank implemented a restructuring to move toward greater utilization of a contingent work force, forcing permanent employees to sign so-called "at will" agreements permitting the bank to fire them without cause at the employer's pleasure, or arbitrarily reduce work hours, cut and eliminate health benefits, or accept demotion or transfer anywhere in the bank's system.

The timing of this restructuring was bizarre. In December of 1992, employees received a letter from the bank's CEO thanking them for "a year of excellent performance" and pledged the bank's commitment to "offer rewarding jobs to our employees at competitive wages and benefits." A scant 5 weeks later, in spite of record profits, employees were restructured out of their benefits.

As a result of this restructuring, thousands of B of A workers are being trapped in the bank's contingent work force, with thousands to follow. With these changes, B of A itself acknowledges only 19 percent of the bank's employees will remain full-time; 23 percent will be part-timers who must pay for their own benefits if they can, and 58 percent will be hourly or temporary with no benefits or opportunity to purchase benefits. The comments of one of the B of A managers about this cynical plan are instructive: "It's real ugly. They basically don't want any full-timers except the manager."

Let me cite some examples of the impact of the bank's action on individuals. All of these examples are women—in fact, the vast majority of those affected are women.

A 14-year employee had her hours reduced from 30 hours per week to 19 per week. One week, she might work as many as 24 hours, but the following week she would be reduced to no more than 14 so as not to exceed the average of 19. This woman had worked a second job at a convenience mart to supplement her low wages. After the cut in hours at the bank, her second job became her primary job.

An 8-year employee, a single mother with two children, worked on average 30 hours per week. She was informed her schedule was to be reduced to 10 hours per week, or she could take the severance package and leave. Her comment was: "I can't live on 10 hours' pay." She took the package. As of last week, she was still looking for a job that provided health benefits for her and her children.

A 9-year employee with diabetes had her work hours reduced from 32 to 16. She also took the severance package, but her very real fear is that even if she secures employment with health benefits, her condition will not be covered for up to 1 year.

As a union organizer for more than 25 years, I have been touched by the pleas of the workers that we not abandon them. What is so frustrating is their level of fear. As one employee said to me, "They made over a billion in profits. I'd be crazy to stick my neck out. They'd just chop it off."

Senator METZENBAUM. Thank you very much for a very strong statement, Mr. Delaney.

I note that Senator Dodd has joined us. Senator Dodd, do you care to make any opening statement?

Senator DODD. Mr. Chairman, I would just like to commend and compliment you for holding this timely hearing. It is never surprising to me that the Senator from Ohio would be holding hearings involving the conditions of workers. It is surprising sometimes when some other Senators hold hearings like this, but Senator Metzenbaum has been so consistently involved in the condition of the workplace and the condition of the people who do the work for America that in his case I am not surprised at all.

I am pleased to welcome Mr. Hobbs from my State, who is a contractor from New Canaan, CT, and who will be offering testimony shortly. I have had the pleasure of meeting with him on several occasions. He works with a very good friend of mine, John Cunningham, of the carpenters' union in Connecticut, who has been involved in training programs and the like.

Mr. Chairman, I don't have a prepared statement, but I would say that it seems to me this problem is just the tip of the iceberg. In addition to the problems of the contingent worker—in fact it may have been you the other day who made this point—the amount of overtime of permanent employees has reached all-time record highs. Rather than hire permanent new people, some employers are asking their existing employees to work far more hours now than before. In fact, the average family today in the United States is working almost 1 month longer each year than they did in 1969. So in addition to the contingent employee, who is being brought in and out, at one end of the spectrum, you've got the per-

manent employees, being told to do more and more work rather than the employer taking on a new hire. So you are seeing at the opposite end of the spectrum a different kind of strain, obviously, but nonetheless one that ought to send out real warning signals about the direction we are heading in.

So I commend you for this hearing. I welcome Mr. Hobbs from my home State. I think you will enjoy his testimony tremendously. This is a highly responsible contractor, an employer, who will offer, I think, a unique perspective on this problem as well as our other witnesses.

Senator METZENBAUM. We very much appreciate your being with us and your continued leadership in the Senate on this as well as so many other issues, particularly with respect to children. We are happy to have you here, Senator, and hope that you can stay as long as is convenient for your own schedule.

Our next witness is Jimmie Ruth Daughtrey, a former employee of Honeywell Corporation.

Ms. DAUGHTREY. Mr. Chairperson, my name is Jimmie Ruth Daughtrey, and I have come from Nashville, TN to testify before you today. I hope that what I have to say will help show that there are some real problems with the idea that big companies can get people to work for them without making them real employees. When this happens, as it happened to me, a worker can lose her pension and her health insurance and other benefits as well. Even worse, a worker can lose basic employment rights, such as the right not to be discriminated against because of age, that I thought Congress wanted all Americans to have.

Briefly, my story is this. I spent most of my first 40 years outside the job market. I raised 5 children and worked only occasionally, when we got into a crunch, to help pay household bills. But when my marriage ended and my children had grown up, I reentered the work force. I was working as a clerk, but wanted a better job. So while I was working, I went to school at night at Chattanooga State Community College to learn how to write computer programs, a field that I knew was growing quickly.

If I must say so, I was a very good student. Honeywell Information Systems, which is now called Bull HN Information Systems, must have thought so, too, for they hired me in 1978, even before I completed the program I was enrolled in.

To work for Honeywell, I had to move to Atlanta, which was hard for me. I was 42 years old at the time and had no family or friends in Atlanta. I worked hard for Honeywell, and it seemed to be paying off. During the 8 years I worked there, I got very good evaluations and good raises, and I was even given some supervisory responsibilities.

But then, in 1986, I and almost everyone else who worked in my department were laid off. I was devastated. Honeywell helped me look for another position within Honeywell, and I, of course, looked for jobs with other employers, too. But it wasn't easy. I was 50 at the time, and high-tech companies did not seem too interested in hiring a 50-year-old grandmother without a college education as a computer programmer.

But finally, something did turn up. My former supervisor sent me for a job interview at Honeywell to do the same kind of pro-

gramming I did before. The person I spoke with, Mr. William Brenner, offered me a job, but he told me that to take the job, I would have to be a "consultant" rather than an employee. From speaking with him, I learned that this meant that I would not get any benefits and would have to pay the employer's share of Social Security taxes. He told me that he hoped this situation would be temporary and that I could soon become a regular Honeywell employee again.

I didn't like this situation, but I felt I did not have much choice, so I took the job. It was odd. In my new position as a consultant, I worked in the same building that I had before. I did the same sort of work that I did before. I had the same schedule. And what was even more peculiar, I was working side-by-side with most of the same people whom I had worked with before the layoff. Many of them also had been rehired as "consultants."

Basically, the situation did not change, although Mr. Brenner did tell us that those of us who were the best "consultants" might soon be rehired as employees. And the IRS did come in and make Honeywell pay Social Security tax, which Honeywell did by having another company "hire" us and pay our Social Security. But the basic fact, that I was not getting Honeywell benefits, continued.

I can't tell you how scary it is to be working, to be over 50, and not to have health insurance or a good pension plan. The whole time, I worried that I might become a burden on my children.

The project that we were working on for Honeywell ended suddenly, and Honeywell terminated some of the "consultants" in January of 1988. I was one of the unlucky ones. I was quite upset, not only because I was again unemployed, but also because I didn't understand why Honeywell got rid of me while keeping younger, less experienced workers on payroll.

So I decided to bring a lawsuit against Honeywell. I had trouble getting a lawyer, so I filed it myself. My lawsuit claimed that Honeywell violated ERISA by saying that I was not an employee for the sole purpose of taking away my benefits. My lawsuit also said that I was a victim of age discrimination when Honeywell fired me and kept younger workers on payroll.

My lawsuit hasn't gotten too far. The judge dismissed the case on summary judgment. What really bothered me was that he did not even want to listen to my story. He seemed to be saying that ERISA and the Age Discrimination in Employment Act don't protect you unless you are a real employee. Just because Honeywell called me a "consultant" and not a real employee, it was actually legal for Honeywell to discriminate against me. As a result, he didn't even look at the facts that I think show Honeywell discriminated against me because of my age.

My case is now on appeal, and the Pension Rights Center in Washington found a lawyer for me. My lawyer told the appeals court that the facts show that I was really an employee, even though I signed a contract saying that I was not. And my lawyer also told the court that it is illegal to hire a former employee as a "consultant" for the purpose of depriving the worker of benefits provided to other employees.

But even my lawyer says that Honeywell is right that the Age Discrimination Act and ERISA and a lot of other Federal laws don't

protect workers unless they are "employees," and that the word "employee" has a very technical legal meaning.

This is an incredible loophole in the law. I just don't see why Honeywell and other companies should be able to take away all the protections Congress has given to employees just by calling them "consultants." It shouldn't be that easy.

I believe that if Congress does not make clear that Federal employment rights protect people like me, pretty soon there will be no employees. There will be only consultants, independent contractors, and other kinds of workers, with no rights and no protections.

I thank you for letting me tell my story. If what I have said today can make a difference in helping others, then I feel it will have been worthwhile.

Thank you.

Senator DODD. It has been. Thank you.

Senator METZENBAUM. Thank you very much.

Mr. Hobbs.

Mr. HOBBS. Senator Metzenbaum, Senator Dodd, my name is Michael Hobbs. I am president of Hobbs, Incorporated, a small, custom residential construction company based in New Canaan, CT. If I had known you were going to say those nice things, I would have brought some cards to hand out. I appreciate it.

Senator DODD. We have broad coverage for you here, I want you to know.

Mr. HOBBS. I would like to begin my testimony by thanking the chairman for holding the hearing on the contingent work force and also to congratulate him on his opening statement, which I thought was brilliant.

One aspect of this important issue, the growing problem of employee misclassification, is the focus of my testimony. It is a complex issue, and 5 minutes is a short time. There are industries, such as data processing, which see the issue in a completely different light from us, and I will let them speak for themselves. I will try to explain the problem as it exists in my industry, construction. Similar conditions exist in landscaping, apparel, building maintenance and migrant farm work, among others.

Let me emphasize at the outset the point that this is not a union or nonunion subject. It concerns law. In our business, we find that there are legitimate contractors who treat their employees as employees, and there are cheaters who treat them as subcontractors. Let me explain the difference.

The legitimate contractor withholds Federal income tax; the cheater doesn't. The GAO did a study which indicated that the cost to the Federal Government for under-reporting of independent contractor taxes was $20.3 billion, with a "b." In this building, I believe it was Senator Dirksen who said that after a while, that gets to be real money. And I submit that that was a very small number, because the only people who were included in that study were people who were in the system, and there is a very significant cash economy which was not even touched.

We pay our half of the Social Security; the other people do not. We pay workers' compensation; the other people do not. We have an interesting system in the State of Connecticut which has a second injury fund which covers uncompensated care for workers in-

jured on the job. The good guys pay for the second injury fund. So not only do we pay for workers' compensation on our workers; we also pay for the workers' compensation coverage for the cheaters—an interesting condition, to put it mildly.

Unemployment compensation, we pay; they do not. The State of Connecticut currently owes the Federal Government $770 million that we have borrowed. The bad guys did not pay into the system. When their employees were required to draw benefits, they were able to do that. We paid the bill going in and now, just to make the cheese even more binding, we are being slapped with a 30 percent surcharge to pay the Federal Government back at $770 million. So it was bad before, but it is worse now.

What happens in the marketplace is that we tend to lose jobs because they wind up with a 25 to 30 percent labor cost discount over us. We pay the social costs, and we go out of business. And in Senator Dodd's home State, there is a very lengthy list indeed of legitimate contractors who have gone bankrupt.

I think the problem I have is when I play the string out, and I look at the end game, I see nothing but bad people out there running the companies, and I am asking who pays the costs that these people have so eloquently described earlier. And I don't see the answer as being anybody good. My opinion is that America does not need low-wage, no-benefit jobs. I think our economy works better, and the quality of life for all of our citizens is better when workers are also consumers. The practice of misclassifying employees as subcontractors in industries like construction flies in the face of this worthy goal.

I thank you.

[The prepared statement of Mr. Hobbs follows:]

PREPARED STATEMENT OF MICHAEL D. HOBBS

INTRODUCTION

Senator Metzenbaum and members of the subcommittee, my name is Michael D. Hobbs, and I am the president of Hobbs, Inc., a small, custom residential construction company based in New Canaan, CT.

I would like to begin my testimony by thanking the Chairman and the members of this committee for holding this hearing on contingent work. One aspect of this important issue—the growing problem of employee misclassification—is the focus of my testimony.

MISCLASSIFYING EMPLOYEES AS INDEPENDENT CONTRACTORS: A NATIONAL PROBLEM IN THE CONSTRUCTION INDUSTRY

The consequences for employees who are misclassified as independent contractors can be devastating. Attached you will see the testimony of, David Bucnis, a carpenter who was misclassified as an independent contractor working on a publicly funded housing project in Norwalk, CT, built by Pace Construction of Bridgeport, CT. In addition, Mr. Bucnis was misclassified as an independent contractor while working on a large nursing home in Stamford, CT, that was built by Suffolk Construction, one of the largest commercial builders in New England.

Mr. Bucnis' case illustrates the consequences for construction workers who face a Hobson's choice of working as an independent contractor with no workers' compensation insurance, unemployment insurance, Social Security, health insurance and pension or not working at all. The consequences of working as an independent contractor without health insurance protection can be devastating for someone like David who has diabetes.

Sadly, Mr. Bucnis is not alone in the construction industry. Thousands of construction workers in Connecticut are being forced to work in this manner. One construction industry' analyst noted that 'until benefit avoidance 'doesn't pay' in any

State, the practice will remain an epidemic." (Cockshaw's Construction Labor News, August 1990)

In sworn testimony before the House Government Operations Subcommittee on Employment and Housing in 1991 a carpenter testified that he worked as a so-called independent contractor on a jobsite developed by Trammell Crow Residential the Nation's largest residential developer. Another carpenter testified about being misclassified on a Red Lobster Restaurant jobsite in Darien, CT.

The contractor who built that restaurant for the General Mills subsidiary was later arrested and convicted of labor violations related to employee misclassification. According to Judge Nigro, who sentenced the law-breaking contractor that built the Red Lobster Restaurant: The use of the independent contractor was obviously an effort by the employer to avoid responsibility for deducting taxes, for contributing to the unemployment compensation division, and for insurance purposes. As Mr. Bucnis noted in his written testimony, the loss of financial benefits and statutory protections provided to employees has very serious consequences in cases of illness or unemployment

Last week, Dave Bucnis and I testified before the House Government Operations Subcommittee on Commerce, Consumer and Monetary Affairs. There were many witnesses, particularly from industries such as computer consulting, who spoke about the benefits of working as independent contractors.

I think it is extremely important for the members of the committee to note the distinction between workers in construction, building maintenance, the apparel industry or migrant farmworkers who are exploited by misclassification and computer consultants making $80,000 or $100,000 a year who prefer the flexibility and tax writeoffs of working as independent contractors.

A Small Business Perspective on Independent Contractor Fraud

The consequences for a small business like mine which plays by the rules are severe. We lose a lot of jobs to competitors who cheat. The table below indicates the average hourly labor cost for a carpenter in western Connecticut, including:

Wages	$17.80
Fringes	3.00
Social Security	1.33
Workers' Compensation	4.57
Unemployment	1.08
Total	$27.78

As you can see, a contractor can cut their hourly labor costs by $6.98 or approximately 25% an hour if they misclassify their workers as independent contractors and fail to pay Social Security, Federal and State unemployment insurance and workers' compensation coverage.

Thus, the economic incentive for a contractor to cheat is far greater than in other industries because workers' compensation rates are significantly higher in construction. In Connecticut, for example, a contractor's average workers' compensation cost is $23.82 for every $100 of payroll. (The Business Roundtable "The Workers' Compensation Crisis . . . Safety Excellence Will Make a Dilference," January 1991, p. 9)

Connecticut's workers compensation costs continue to grow, as they do in every State. Connecticut's 2nd Injury Fund—which pays compensation for employees whose employers fail to provide coverage—has nearly doubled in the last 4 years from $23.9 million to $46 million. State of Connecticut. Department of Treasury.

Just this past week the State of Connecticut enacted legislation to cut costs by significantly reducing employee benefits by 19%. This important legislation also included language—supported by labor and management in the construction industry—to make wilfull misclassification of employees as independent contractors a felony. This important change will allow the Workers' Compensation Fraud Unit to prosecute these cases of employer fraud which have become commonplace in the construction industry.

While this workers' compensation reform legislation will help cut costs, it doesn't mean that employers will reclassify their employees correctly. Other costs for Connecticut contractors, such as unemployment compensation, will continue to increase significantly over the next 5 years. Finally, I would be remiss if I didn't mention the additional burden misclassification imposes on the Nation's health care crisis. Contractors are not required by law to provide health insurance for their workers. However, a contractor who misclassifies workers as independent contractors, not only avoids paying the mandated benefits, Social Security, Federal and state unem-

ployment insurance and workers' compensation, but it is unlikely to provide their soiled independent contractors with any hearth insurance.

Guess who helps to pay for the health care costs of the uncovered workers and their families? Small employers, like myself, who provide their workers with health protection ultimately pay larger health care premiums to cover the uncompensated costs for their competitor's unprotected workers. Insured workers also pay for their uninsured counterparts in the form of reduced benefits.

I am not here today to propose solutions to the health care crisis, but you should be aware that hearth care expenses are another indirect, hidden cost of employee misclassification.

Not only do employers who play by the rules pay greater health care costs, workers' compensation premiums and unemployment taxes, but we ultimately pay more Federal income tax as well. According to the Internal Revenue Service, the U.S. Treasury lost $20.3 billion in 1992 because of underreporting by self-employed individuals, including independent contractors. That lost revenue will be made up in the form of higher income taxes on upper-income Americans, many of whom own and manage a small-business, like myself.

ENFORCEMENT DIFFICULTIES IN CONSTRUCTION

In addition to the economic incentives for contractors to misclassify employees, it is unlikely that they will ever get caught doing it. The construction industry tends to employ a transient work force that often works on different jobsites for relatively short periods of time.

As we all know, State governments and the Federal government have limited resources to investigate complaints about this or any other labor violation.

Earlier this month, for instance, the State of Connecticut included two additional investigators to monitor compliance of labor laws on construction projects. It was the first time since 1967 that additional enforcement personnel have been earmarked for the problems of the construction industry.

Frequently, by the time a State or Federal investigator arrives to investigate a complaint the offending contractor has moved on to another jobsite. Moreover, many of the contractors who blatantly break the laws are from out-of-state with no ties to the local communities whatsoever.

It is also difficult for the IRS to track down contractors and employees that deal strictly in cash. According to one IRS source, we're overburdened with many, many other types of tax dodging. Manpower is stretched so thin it is very difficult to make much of an impact on an industry as vast as construction. (Cockshaw's Construction Labor News & Opinion. August 1990, p. 3) Even if by some chance a contractor is caught, there is no systematic referral system between State and Federal agencies on these matters that I am aware of.

RECOMMENDATIONS

There are several suggestions I would like the Senate to consider that would be helpful.

One of the reasons heard over and over again for not obeying this law is that there is great confusion over the definition of an employee versus an independent contractor. As you probably know, there are 20 common law factors used by the Internal Revenue Service to make the determination if someone is an employee. First, I suggest you simplify the test to determine whether someone is an employee by reducing it to three simple questions. This test covers most situations that I am aware of.

1. Control. Who controls how, when and where the work is done?
2. Multiple Employers. Does the independent contractor work for more than one employer?
3. Profit. Is the independent contractor making a profit or loss on their work?

Second, I believe that the Internal Revenue Service, the Department of Labor, and the Immigration and Naturalization Service, as well as other Federal compliance agencies, have to do a better job of focusing their efforts on industries, such as construction, apparel, building maintenance, and migrant farm workers, where this is an enormous problem. Workers are being exploited and employers, like myself, who obey the rules are victims as well.

Third, you should see that the Labor Law Reform Commission formed by Secretary of Labor, Robert Reich, look at this critical issue. Afterall, any recommendations that they will make will be worthless to the so-called independent contractors who are exempted from all labor law protections.

Fourth, improve cooperation between the various enforcement agencies so that if the IRS uncovers a problem, they share the information with the Federal Labor Department and State enforcement officials as well.

Fifth, last week the Connecticut State legislature passed legislation, with bipartisan support, that adds a $150 civil penalty for wage and hour and prevailing wage violations. These are the violations most frequently cited when a contractor misclassifies an employee as an independent contractor. The fines are earmarked to hire additional compliance personnel in the wage and hours division.

Finally, you should consider repealing Section 530 of the Internal Revenue Code which protects employers who wilfully misclassify their employees as independent contractors.

SUMMARY

Mr. Chairman and members of the committee, I appreciate having the opportunity, as a small businessman for more than 20 years, to address this critical issue affecting the construction industry.

Both labor and management strongly support efforts by your committee to include more people into the system as employees. Our society ultimately works best when there are a lot of consumers. And a carpenter making $8 an hour, with no benefits, doesn't consume very much—at least in the northeast. He or she would be lucky if they can pay the rent and buy groceries.

The cost of workers' compensation, the cost of unemployment insurance, the cost of Social Security, the cost of Federal and State taxes are supposed to impact all employers. Not just honest employers who obey the law. It is outrageous that I am subsidizing my competition when they knowingly break the law by misclassifying workers as independent contractors.

All of us pay the price for this fraud. Legitimate small employers lose jobs, the government loses revenue and workers lose wages, benefits and the legal protections provided to employees.

Thank you.

Senator METZENBAUM. Mr. Hobbs, I thank you for making that statement. As I was sitting here, I was thinking that we see all of these TV promotions about the great horror stories, the great ripoffs, and all the terrible things that this man did or that woman did, and yet I think what you have just told us is one of the worst horror stories that could be found anywhere in America, because you aren't talking about one person or two people; you are really talking about the economy in which you work, in which you make your living, in which you hire people and pay them in accordance with the law. But you are actually talking about a broader problem that encompasses the entire Nation.

I am only sorry that millions of Americans could not hear your statement, because I believe you have put your finger on a very, very disturbing and very upsetting problem which I think could amount to the destruction of the whole American free enterprise system if it is permitted to go on as it is presently travelling. And you are right in the midst of it, and you are one of those who is living with it but being hurt by reason of what is occurring. I really appreciate your comments.

Senator Dodd, I don't know what your time constraints are, but if you have some questions for Mr. Hobbs, please proceed.

Senator DODD. I was impressed as well, Mr. Chairman, with the testimony. It is not often framed in those terms, and I think it is important to hear that. There is a tendency, and we are all guilty of it here, not just with business but with so many other groups, to sort of lump everyone together and to treat them all alike. There are however significant differences, and for people who obey the law and try to see to it that their work forces are being properly

treated in this case, they end up paying a price. At the end of the day, the bottom line just reflects that.

So by allowing this to continue to go on the way it is, we only encourage more of it. Our silence makes us complicit in these actions.

So I am pleased to have your testimony, Mr. Hobbs. We are obviously delighted to have people such as Ms. Perkins, Mr. Delaney and Ms. Daughtrey talk about what this trend has meant to them. These stories are critically important, because you all represent thousands of other people with your testimony here this morning.

What we don't often hear however is the employer's perspective of what happens to business—business people who turn a key in the door every morning, where the margins are razor thin, and the difference between success and bankruptcy hangs on just a few minor twists and turns. It is hard enough to compete in a world today where credit is not as available as it should be if you are in small business, and trade issues are such that it is harder for American companies to compete overseas. All of those things, we understand, we don't like, and we try to do something about. But when people engage in the kind of practices we have heard about this morning, that pushes the legitimate businesses literally out of the game. And when that occurs, it is harmful to our economy and to our country.

So Mr. Chairman, I don't have any real specific questions. I think the testimony speaks for itself.

Senator METZENBAUM. Thank you very much, Senator Dodd.

I do have some questions. Ms. Perkins, what kind of money do you make as a temporary worker?

Ms. PERKINS. I don't temp anymore in Phoenix, AZ because the money is only about $5 to $8 an hour; that's the average salary. So I temporarily teach now, at $20 an hour; and I lecture.

Senator METZENBAUM. I give you credit for being able to create something, but I think you are an unusual temporary worker, and obviously, you have been able to adjust. But knowing what you do about the temporary workers, can an average temporary worker pay rent, buy clothes and food, and make ends meet with what her or she earns?

Ms. PERKINS. I temped in Los Angeles in the late eighties, and I got up to $22 an hour. Those salaries in Los Angeles have eroded back down to about $12 to $16. In Arizona, there is something called what I called a "half-day temp scam," where temp workers will get called at noon to work 3 hours at $6 or $8 an hour, two or 3 days a week.

So today, no. It is really tough, and there are a lot of people living on the edge. And I have been collecting letters from people in Arizona. A lot of temps were afraid to write letters for fear they might lose their jobs if it gets out in the press.

Senator METZENBAUM. Would you like to put those letters in the record? If you want to protect the names, staff could work that out with you; whichever you prefer.

Ms. PERKINS. OK. I have two for the record today, and I have a list back in Arizona of about 10 more people.

Senator METZENBAUM. If you'd be good enough to send them in to us, we will include them in the record.

Ms. PERKINS. Yes.

Senator METZENBAUM. Ms. Daughtrey, while you were a full-time worker at Honeywell, did you feel a sense of loyalty to the company? Did you feel that you were part of the team?

Ms. DAUGHTREY. Yes, I certainly did.

Senator METZENBAUM. Did you feel differently after the company terminated you?

Ms. DAUGHTREY. Yes, completely; totally different.

Senator METZENBAUM. Why?

Ms. DAUGHTREY. Well, you just weren't an employee anymore. You just didn't feel part of it; you were no longer a "Honeyweller." And they seemed to show that by taking away all your benefits and treating you like someone who was not an employee.

Senator METZENBAUM. You seem to be a decent human being; you raised a family of five children, and went back to work in order to provide for yourself so you wouldn't be a burden on your family. Do you see in this shift from permanent employees to temporary employees something un-American, something insidious, something like cutting corners and trying to get away with something?

Ms. DAUGHTREY. I certainly do.

Senator METZENBAUM. So do I.

Mr. Delaney, I understand you have spoken with many of the Bank of America employees affected by the company's decision. Have you talked with the company?

Mr. DELANEY. Not directly, no.

Senator METZENBAUM. Bank of America was always known in this country as that tremendous financial giant on the West Coast, founded, I think, by Mr. Gianini.

Mr. DELANEY. That's right.

Senator METZENBAUM. I don't think the Gianinis are there anymore; is that correct?

Mr. DELANEY. No, and there was an interesting news story. His grand-daughter was horrified when the changes became public. She said her grandfather would not have dealt with the workers that way, that after the 1906 earthquake, he went around and was handing out money to help people get started again.

When the workers at Bank of America had their bad troubles in the late eighties as did many of the banking institutions, they really pulled together. They set out goals for each unit. There are about 10,000 work units within the Bank of America, and each unit had its goals. And all the workers I talked to either met or exceeded those goals, and they felt they really turned the bank around. The workers themselves had that sense of pride. And when this came down, they felt totally betrayed. They felt that this was a total act of ingratitude. And the work force now is very demoralized around this. Even those who weren't affected were touched by the harshness of this action.

Senator METZENBAUM. Who owns the Bank of America at the present time?

Mr. DELANEY. It is publicly traded.

Senator METZENBAUM. But is there no particular controlling interest?

Mr. DELANEY. I couldn't identify it. It is a publicly traded firm.

Senator METZENBAUM. Under these circumstances, can workers organize or act collectively to improve their lot?

Mr. DELANEY. Theoretically. Practically speaking—and I have had experience with Bank of America in trying to organize them over 20 years—one of the problems with labor law is the unit determination. It is clear that banks have had numerous tests as to what an appropriate unit would be for collective bargaining, but Bank of America and other employers use the unit determination question to drag it through hearings, and appeal the unit determination to Washington. Ultimately, it takes 2 to 3 years to get an adjudication before you can have an election.

Senator METZENBAUM. Can temporary workers vote in an election?

Mr. DELANEY. Generally not. They generally do not meet the test of employment as an employee. In cases where they might, as Ms. Perkins mentioned, temporary workers feel very vulnerable. They feel very much at the mercy of the employer, which makes them very difficult to organize because they look upon their employment as strictly relying upon the good graces of the employer.

Senator METZENBAUM. Do you think we ought to change the National Labor Relations Act to make it clear that temporary workers have a right to vote in an election?

Mr. DELANEY. Very definitely.

Senator METZENBAUM. Mr. Hobbs, as I get it, you are part of a group of contractors; is that correct?

Mr. HOBBS. No, Senator. It is a labor-management organization, the Carpentry Industry Partnership. I am management co-chair, and Senator Dodd's friend John Cunningham is the labor co-chair.

Senator METZENBAUM. I see. Do these construction companies that misclassify their workers as independent contractors do that deliberately, or are they simply unaware of the legal consequences that follow? Is this a deliberate effort to avoid their responsibilities towards full-time employees?

Mr. HOBBS. It is clearly the latter. There is no misunderstanding about this. In fact, we passed watershed legislation in the State of Connecticut, indicating that because we were having problems getting the enforcement officials to enforce the law, we got a law passed that allowed one contractor who lost work to another to take a private course of action against that other contractor. They immediately insulated themselves by taking some carpenter off the street and saying, "You are now going to hire all of my carpenters for me," so we can no longer prove that in fact that entity, Acme Construction, is hiring their employees illegally. They know exactly what they are doing.

Senator METZENBAUM. It is sort of a preconceived, well-thought out, legally secure position, but done with deliberation to avoid their obligations toward full-time employees.

Mr. HOBBS. In fact, I don't think it is legally secure if the laws were enforced, but in testimony before the House, we have heard people in relatively high-compliance industries like data processing really complaining about the amount of attention they get from the Internal Revenue Service on this issue, and in very, very low-compliance industries like ours, we have real problems getting the Service to do anything for us. In other words, if we report to the

Service that there is a case in question going on at that very moment, what we tend to hear is that, "We have bigger fish to fry," and "We can't do anything," or "We are not going to do anything."

Senator METZENBAUM. Maybe you need a friend at court like Senator Dodd.

Mr. HOBBS. We can use all the friends we can get.

Senator METZENBAUM. If he works on that problem with you, I will be very happy to help him, because I think what you are doing is so right as compared to what others are doing, which is so wrong for the American economy and for the capitalist system, and I am concerned that if it is permitted to go on, it is very dangerous. I think this trend has the potential to destroy the entire concept of our economy, and I think you people are fighting a difficult battle, and I think those of us in Government have an obligation to try to help you.

Mr. HOBBS. I really appreciate your saying that. The first hearing that was held down here, Congressman Lantos and Congressman Shays called. What we listened to was the fact that it wasn't a little Connecticut construction problem; we had testimony from all over the country—Florida, Pennsylvania, Michigan, California—and in four or five different industries, and what we found was that some of the people are a little more inventive than others in creating even more sophisticated scams. But basically, it is insidious; it is spreading very, very rapidly, and a great deal of what we see just simply never shows up in any system. There is testimony attached to my testimony from a carpenter from Connecticut who worked on a public-funded housing project, was paid $8 an hour in cash in an envelope at the end of each week; no 1099, no W–2—public money.

Senator DODD. How much was that at the end of each week?

Mr. HOBBS. He made $8 an hour. When he went and explained to his supervisor that this was happening, the guy said, "I don't want to know your last name. It will say' David' on your envelope, and it will be $8 times the number of hours you work."

Senator DODD. On that, I won't ask you now, but before you leave here, would you let me know that employee's name and that company's name?

Mr. HOBBS. Absolutely. That testimony is attached to mine, sir.

Senator METZENBAUM. I think the Labor Department and the IRS could be helpful. I think that Senator Dodd and I and Senator Wellstone certainly would be willing to try to be supportive and see what we could do.

Mr. HOBBS. Thank you, Senator.

Senator METZENBAUM. I am happy to see Senator Wellstone has joined us. He has certainly indicated strong interest in this issue over the period of time he has been with us in the Senate.

Senator Wellstone, do you have any statement or questions?

Senator WELLSTONE. I do not have a statement, Mr. Chairman, and would rather just go with a couple of questions.

Senator METZENBAUM. Go right ahead.

Senator WELLSTONE. I am at a bit of a disadvantage, and I apologize. I had another committee meeting that I had to attend. So if I am redundant, please accept my apology.

I had one question I could ask, really, any of you, but I'll start with Ruth—and I am Paul, so we'll be on a first-name basis. When you were re-hired as an independent contractor with Honeywell, was that with no health care coverage?

Ms. DAUGHTREY. That's right.

Senator WELLSTONE. So then, by way of health care coverage, were you able to obtain any?

Ms. DAUGHTREY. Well, under COBRA, I had 18 months of health care coverage, which I had to pay the premiums myself. And I did that until it ran out, and then I didn't have any more.

Senator WELLSTONE. And then, after COBRA ran out——

Ms. DAUGHTREY. I didn't have anything after that.

Senator WELLSTONE. —your choice was between an exorbitant premium that you could not afford, so you were just without?

Ms. DAUGHTREY. That's right.

Senator WELLSTONE. And Wendy, I take it you have written a book, which I would like to read. Above and beyond the low wages, and above and beyond the uncertainty of it all and being without any of the rights that we think now go to the work force, is part of the terror of this being without health care benefits? Where does that figure in? I am very interested in health care policy, and I ask the question for that reason, but I am also driving to a specific point in a moment. Given your work, does this emerge as a huge issue here, in terms of the fear that people have?

Ms. PERKINS. Yes. In fact, I have letters from two people—a part-timer who worked for the city of Phoenix, and a substitute teacher, a homebound teacher—and health care is a big problem in Arizona.

I still have no health care. I have been without health care for 5 years now. In fact, at one point when I was a temp, I had a temp insurance policy for about 90 days, and I got in a car accident 1 day before the insurance policy lapsed.

Senator WELLSTONE. And do you think, Mr. Delaney, in terms of the bottom line of Bank of America, that part of what goes into their calculation about turning thousands of full-time employees into part-time is the health care cost part of it? Do they then cut that out?

Mr. DELANEY. Oh, absolutely; anything below 20 hours does not qualify for health benefits, retirement, sick leave, holidays. They are totally without benefits.

Senator WELLSTONE. Mr. Chairman, if I could just get your attention for a moment, and Senator Dodd may be interested in this, too—although I don't know that we are all in total agreement on health care—but one of the things that concerns me—this is a very interesting point, because in the task force work, one of the issues that has come up as they talk about these health alliances at the State level is that companies with 1,000 employees and over want to be able to opt out. And one of the things that comes from this testimony today—and I am just asking the question—is that I think there is a very real danger, Mr. Chairman, that what will happen is that if in fact they do opt out, it seems to me one of the absolute conditions is they have to cover part-time employees, because if that isn't the case, then I guarantee you we are going to see a continuation of this. I don't think the opt out is a good idea for lots of reasons that I won't go into today, but it does seem to

me bare minimum that if they want to opt out, they have to cover the part-time employees.

Senator METZENBAUM. I think the Senator's point is right on target; I couldn't agree more.

Senator DODD. Well, I would hope there is no opting out for this reason. Then my vote goes for no opting out.

Senator WELLSTONE. I am glad to hear the Senator say that. I really am.

Senator DODD. You'll destroy any hopes for having a health care program if you allow that.

Senator WELLSTONE. Well, I think Senator Dodd is right on the mark on that.

Thank you. And I really do apologize for being late and thank you very much.

Senator DODD. Could I just ask one question, Mr. Chairman?

Senator METZENBAUM. Certainly.

Senator DODD. I meant to bring this up, Mr. Hobbs, and I apologize. You mentioned Chris Shays, the congressman from Fairfield County. He and I have been working, as you know, over the years on a construction safety bill—we became deeply interested because of the disaster at L'Ambiance Plaza which was the second largest construction site accident in this country. Twenty-eight people lost their lives when that lift-slab construction site collapsed a number of years ago.

At any rate, I just wonder if you might comment on the effect of what is occurring with contingent workers on construction safety and if you see a relationship there with construction safety issues and this issue.

Mr. HOBBS. There definitely is. Training is a huge part of construction safety as it is in any other safety program, and people who are treated as chattel are not trained well at all, and there is an attitude. As we have tried to research this issue in Connecticut, the labor department people who seem to have the most experience with dealing with the phenomenon indicate that there is a mind set in most employers, and they either come down as good people or bad people. They don't skimp on safety and pay workers' comp. They just either don't do it, or they do it. Again, it is not a union/nonunion issue. We know very responsible nonunion companies who do train their employees and who do run very responsible safety programs. But somebody who has the mind set to say, "I can get away with paying this person as little as possible; I'll keep him when I need him, and I'll fire him as soon as I am finished with him," isn't likely to be too worried about his safety.

If I may—and I am sorry that Senator Wellstone left—I left out health care coverage entirely during my testimony because I was speaking only of the law, but we have a rather interesting situation in the State of Connecticut as well.

We have an uncompensated care system. Remember those people who weren't paying anything into this system. I happen to be a union firm, and we do carry medical benefits through the union on all of our people. There are two hospitals being built in the State of Connecticut. The board of directors of both hospitals accepted a low bid from construction companies who carried no health care on their workers. The union went to the boards and asked does that

really make any sense to you at all that the people outside are going to come inside when they get hurt, and they aren't going to be able to pay the bill, and the hospitals say, "Get out. We have the low bid, and that's what we want."

The way this works in the State of Connecticut is that all Taft-Hartley Fund covered members pay $1.44 for every dollar's worth of health care they get. So if you want to play that scenario out, after they get hurt outside working in the hospital, they came inside and got treated, and they sent us the bill. You can't make this stuff up.

Senator DODD. No. And the members of those unions are paying—I forget the total amount, but the amount that they are paying for the uncompensated care is very high.

Mr. HOBBS. Yes. It's $1.44 for every dollar. Forty-four percent surcharge.

Senator DODD. Yes, it's staggering.

Senator METZENBAUM. I want to thank this panel very much. I look forward to working with you, and I hope that we can do something, based upon your testimony, that is constructive. You have been very informative.

Senator METZENBAUM. Our next panel of witnesses includes Delores L. Crockett, acting deputy director of the Women's Bureau of the United States Department of Labor; Dr. Eileen Appelbaum, from Washington, DC, associate research director of the Economic Policy Institute; Helen Axel, Lebanon, NJ, a management research consultant; Mitchell Fromstein, of Milwaukee, president and CEO of Manpower, Inc., and Dr. John R. Heneisen, of Rome, GA, dean of student work at Berry College, and former president of the National Association of Student Employment Administrators.

We are happy to have each of you with us.

I must say I am very pleased also to see that Karen Nussbaum, former head of Nine to Five, from Cleveland, and nominated to head the Department of Labor Women's Bureau, is with Ms. Crockett. She is an old friend, and we are happy to welcome her here. She has paid her dues in our society, and it is good to see her as part of the administration. Her nomination comes before the committee tomorrow, and I feel confident that she will meet with the same approval from all the members of the committee that she does from this member of the committee.

Our first witness, then, will be Delores Crockett. I think the witnesses are all aware of the committee's 5-minute rule.

Ms. Crockett.

STATEMENTS OF DELORES L. CROCKETT, WASHINGTON, DC, ACTING DEPUTY DIRECTOR, WOMEN'S BUREAU, U.S. DEPARTMENT OF LABOR, ACCOMPANIED BY KAREN NUSSBAUM, FORMER DIRECTOR OF NINE TO FIVE; EILEEN APPELBAUM, ASSOCIATE RESEARCH DIRECTOR, ECONOMIC POLICY INSTITUTE, WASHINGTON, DC; HELEN AXEL, MANAGEMENT RESEARCH CONSULTANT, LEBANON, NJ; MITCHELL S. FROMSTEIN, PRESIDENT AND CEO, MANPOWER INC., MILWAUKEE, WI, AND JOHN R. HENEISEN, ROME, GA, DEAN OF STUDENT WORK, BERRY COLLEGE, AND FORMER PRESIDENT, NATIONAL ASSOCIATION OF STUDENT EMPLOYMENT ADMINISTRATORS

Ms. CROCKETT. Thank you, Senator Metzenbaum, and good morning.

I am very pleased to be a part of this distinguished panel, and I appreciate the opportunity to come to you today to speak about the "contingent" work force and its impact on our standard of living, productivity and competitiveness.

We are especially pleased to address this issue because of its disparate effect on women.

The Department of Labor also welcomes this committee's concern about the growth of the "contingent" work force. At a time when both the nature of work and the make-up of the work force have undergone rapid changes, Secretary Robert Reich has repeatedly stressed his commitment to creating high wage, high skill jobs in a work force prepared to compete in the global marketplace.

Before I go any further, Senator, let me ask you a question. Which company is now the largest private employer in the United States? Perhaps you would mention General Motors, with 370,000 workers, or IBM, with over 330,000 workers, or another well-known industrial giant. You would be wrong. According to a recent Time magazine article, the largest private employer in America is Manpower, Incorporated, with 560,000 workers. It furnishes the working hands and the brain power to hundreds of small, medium, and large companies across the Nation which have reduced large, permanent payrolls in this era of downsizing and strict attention to the bottom line.

Into the race to create more and better jobs comes this new and perplexing development—the rapid increase of the contingent work force. More firms have turned to temporary, part-time and leased workers and independent contractors—the contingent work force.

We are aware that there are competing views on the trend toward greater use of contingent workers. Flexibility can benefit employers confronting changing markets, and may fit the needs of some employees who go to school, must meet family responsibilities, or seek partial retirement. But the current trend does raise additional concerns.

President Clinton, Secretary Reich, and all of us are concerned about the future of the American work force. Where are we going? What kinds of jobs and career paths will be available? What standard of living will our people maintain in this new era?

Let's look at the definition and size of the contingent work force. To understand these problems, we need to examine the different kinds of contingent work, accompanying wages and benefits, and

the extent to which labor laws protect or do not protect this new category of workers.

The term "contingent" employment has been identified with a wide range of employment practices including part-time work, temporary work, employee leasing, self-employment, contracting out, and home-based work.

Contingent workers go by a variety of names depending on one's philosophical take on the issue. They have been labeled "casual" workers, "marginal" workers, "assignment" workers, "fringe," "secondary," "low overheads." Because agreement is lacking on the composition of the contingent work force, estimates range in size from 13 to 33 percent of the work force. One estimate of its size was between 29 and 36 million in 1988, or 25 to 30 percent of the civilian labor force.

Let's look at some of its components. In 1992, in the part-time work category, there were 20.5 million voluntary and involuntary part-time workers, which represents about 17.5 percent of employed civilian workers. In the temporary work category, the best estimate of temporary employment available is the number of persons employed in the help supply services industry, which includes all temporary help employees and headquarters staff of employee leasing organizations. This industry includes businesses supplying temporary help to other establishments on a fee or contractual basis. This estimate does not include people whose jobs are temporary and who have direct arrangements with their employers.

Temporary help workers perform a variety of jobs from service work, earning the minimum wage, to highly-paid technicians and administrators. In 1992, employment in the help supply services industry averaged about 1.4 million, or 1 percent of nonagricultural payroll employment, according to the Bureau of Labor Statistics.

There has been a remarkable 250 percent increase in the incidence of growth in this industry over the past 10 years. Surveys find that temporary agency hires were the most commonly used staffing alternative.

Turning quickly to leased workers, we find that in 1993, firms, mostly small ones, will have leased more than one million workers. In 1990, the National Staff Leasing Association estimated that there were between 200 and 300 leasing companies, with some 500,000 workers under lease, an increase from fewer than 100,000 in 1980. And according to one estimate, the number of leased employees could reach 3 to 4 million by 1995. That is a 5-fold increase in 10 years.

In the area of moonlighting, Americans engaged in moonlighting activities in unprecedented numbers in the 1980's. The most important reason given for working at more than one job was the need to meet regular household expenses. According to a survey conducted in 1991, about 7 million persons hold two or more jobs. That is an increase of 51 percent since 1980. And women accounted for nearly two-thirds of the new multiple job-holders between 1985 and 1991. Both the number of women with two or more jobs, and the rate at which women held multiple jobs were at record levels in 1991. Women who moonlight are much more likely than men to work at multiple part-time jobs.

Now, is this voluntary or involuntary? Some contingent workers choose such work because they receive various benefits. Some of the reasons are: additional income, flexible work time, a way to improve skills, a means of obtaining full-time work. On the other hand, someone who sees a temporary job as a means of obtaining full-time work actually wants full-time work and may be using this to enter the work force. Someone having difficulty with child care arrangements may want a full-time job, but need the flexibility.

Professor Chris Tilly wrote in 1991 that "Involuntary part-time workers—part-time workers who would prefer full-time hours—account for most of the growth in part-time employment's share of the work force since 1969."

Senator METZENBAUM. Ms. Crockett, could you wind up, please?

Ms. CROCKETT. Yes. I could give some differences in the wages and benefits by briefly saying to you that part-time workers paid hourly rates earn 62.3 percent of the hourly wages of those who work full-time; that the benefits, as you have heard, are considerably low to none; that the impact is mostly on women, that is, younger women and older women; and that we see a number of problems entailed in contingent work that primarily revolve around the issues of low benefits and the inability to bond in a positive manner with the work force.

The Department of Labor is committed to looking at these issues and how some of the policies and practices we operate impact on the American worker.

Thank you.

[The prepared statement of Ms. Crockett follows:]

PREPARED STATEMENT OF DELORES CROCKETT

Mr. Chairman: Good morning. I am pleased to be a part of this distinguished panel and I appreciate the opportunity to come before you to speak about the "contingent" work force and its impact on our standard of living, productivity and competitiveness. We are especially pleased to address this issue because of its disparate effect on women.

The Department of Labor welcomes this committee's concern about the growth of the "contingent" work force. At a time when both the nature of work and the make-up of the work force have undergone rapid changes, Secretary Robert Reich has repeatedly stressed his commitment to creating high wage, high skill jobs in a work force prepared to compete in the global marketplace.

Before I go any further, Senators, let me ask you a question. Which company is now the largest private employer in the United States? Perhaps you would mention General Motors (370,000 workers) or IBM (330,000 workers) or another well-known industrial giant. But those would be erroneous answers. According to a recent Time Magazine article, the largest private employer in America is Manpower, Inc. with 560,000 workers. It furnishes the working hands and the brain power to hundreds of small, medium and large companies across the nation which have reduced large, permanent payrolls in this era of downsizing and strict attention to the bottom line. In fact, Manpower, Inc. is the world's largest temporary employment agency.

In the race to create more and better jobs comes this new and perplexing development—the rapid increase of the contingent work force.

More firms have turned to temporary, part-time and leased workers and independent contractors—the contingent work force.

The contingent work force is an increasing phenomenon.

We are aware that there are competing views on the trend toward greater use of part-time, temporary, leased employees or private contractors in a fast-paced dynamic society. Flexibility can benefit employers confronting changing markets, and may fit the needs of some employees who go to school, must meet family responsibilities, or seek partial retirement. But the current trend raises additional concerns.

President Clinton, Secretary Reich and all of us are concerned about the future of the American work force. Where are we going? What kinds of jobs and career

paths will be available? What standard of living will our people maintain in this new era?

DEFINITION AND SIZE OF THE CONTINGENT WORK FORCE

To understand these problems we need to examine the different kinds of contingent work, accompanying wages and benefits and the extent to which labor laws protect or do not protect this new category of workers.

In the United States, the term "contingent" employment has been identified with a wide range of employment practices, including part-time work, temporary work, employee leasing, self-employment, contracting out, and home-based work.

Contingent workers go by a variety of names depending on one's philosophical take on the issue. They have been labeled "casual" workers, "marginal" workers, "assignment" workers, "fringe", "secondary" and "low overheads." Because agreement is lacking on the composition of the contingent work force, estimates of its size vary from 13 to 33 percent of the work force. There is double and triple counting of some jobs because not all categories of contingent workers are mutually exclusive, e.g. there are self-employed and temporary workers who work part-time.

One estimate of its size was between 29.9 and 36.6 million in 1988, or 25 to 30 percent of the civilian labor force (New Policies for the Part-Time and Contingent Workforce, Economic Policy Institute, 1992). The Bureau of Labor Statistics has not estimated its size. But we can look at some of its components.

Part-time Workers

In 1992, there were 20,572,000 voluntary and involuntary part-time workers representing about 17.5 percent of employed civilian workers.

Temnorary Workers

The best estimate of temporary employment available is the number of persons employed in the help supply services industry (which includes all temporary help supply services employees and headquarters staff of employee leasing organizations). This industry includes businesses supplying temporary help to other establishments on a fee or contractual basis. This estimate does not include people whose jobs are temporary and who have direct arrangements with their employers.

Temporary help workers perform a variety of jobs, from service workers earning the minimum wage to highly paid technicians or administrators.

In 1992, employment in the help supply services industry averaged about 1.4 million or 1.3% of nonagricultural payroll employment according to BLS. There has been a remarkable 250% incidence of growth in the industry over past ten years.

According to a 1988 survey of 521 firms, temporary agency hires were the most commonly used staffing alternative. A similar survey in 1992 came to the same conclusion. Of the 472 surveyed firms using contingent workers in the 1988 survey, over 300 hired independent contractors in 1987.

Leased Workers

In 1993, firms, mostly small ones, will have leased more than a million workers, according to the National Staff Leasing Association. In 1990, the Association estimated that there were between 200 and 300 leasing companies with some 500,000 workers under lease, an increase from fewer than 100,000 in 1980. According to one estimate, the number of leased employees could reach three to four million by 1995 ("Firms Turning To 'Rent-a-Staff,'" The Washington Post, January 14, 1990).

Moonlighting

Americans engaged in "moonlighting" activities in unprecedented numbers in the 1980's, and the most important reason given for working at more than one job in May 1991 was the need to meet regular household expenses ("Multiple jobholding unchanged in May 1991"). According to a survey conducted in May 1991 about 7.2 million persons held two or more jobs, an increase of 1.5 million (25 percent) from 1985 and 2.4 million (51 percent) since 1980.

Women accounted for nearly two-thirds of the 1.5 million increase in multiple jobholders between 1985 and 1991. Both the number of women with two or more jobs (3.1 million) and the rate at which women held multiple jobs (5.9 percent) were at record levels in May 1991. Women who moonlight are much more likely than men to work at multiple part-time jobs.

VOLUNTARY OR INVOLUNTARY?

Some contingent workers choose such work because they perceive various benefits to it. Some of the reasons which workers give for performing contingent work, addi-

tional income, flexible work time, a way to improve skills, a means of obtaining full-time work, may be positive or negative, depending upon your point of view.

Someone who sees a temporary job as a means of obtaining full-time work actually wants full-time work and may be using this to enter the work force or obtain additional skills.

Someone having difficulty making child care arrangements may want a full-time job but need the flexibility that a part-time job offers. The redesigned Current Population Survey, which will be in use in January 1994, will collect information about those working part-time because of child care problems.

Many others, such as involuntary part-timers, are settling for contingent work when what they want and need is full-time permanent employment. About one-fifth of persons who usually work part-time do so for economic reasons, that is, they would prefer full-time employment.

As Professor Chris Tilly, assistant professor of policy and planning at the University of Lowell in Lowell, Massachusetts, wrote in the March 1991 issue of the Monthly Labor Review, "Involuntary part-time workers—part-time workers who would prefer full-time hours—account for most of the growth in part-time employment's share of the work force since 1969. To explain the continuing expansion of part-time employment, we must look to changes in labor demand, not labor supply."

There has been criticism that the Current Population Survey (CPS) "hides" part-time jobs because individuals who work two or morejobs that total more than 34 hours are classified as "full-time" workers. This will be addressed by a revised CPS, to be initiated in January 1994, which will ask how many jobs an individual has and, if the response is more than one job, how many hours are worked on the main job and how many hours on all other jobs.

WHAT ARE THE DIFFERENCES IN WAGES AND BENEFITS BETWEEN FULL-TIME PERMANENT WORKERS AND CONTINGENT WORKERS?

One of the more striking differences between full-time permanent workers and contingent workers is hourly wages. With respect to part-time workers, this is apparent when we look at the 1992 data which show that all part-time workers paid hourly rates earn 62.3 percent of the hourly wages of those who work full-time.

With regard to the benefits of part-time workers, even those in medium and large companies have significantly lower benefits than full-time workers. Part-timers in small establishments have even fewer. This is particularly troubling since small firms may have created most of the new jobs between 1988 and 1991, according to a 1993 report by Cognetics, Inc., an economics research firm. Table 1 shows the percentage of full-time and part-time employees in small, medium, and large establishments participating in selected employee benefit programs.

Table 1. Percent of full-time and part-time employees in large/medium and small establishments participating in selected employee benefit programs in 1991 for large/medium establishments, and in 1990 for small establishments

Employee benefit program	Employees, lg/med establishments		Employees, sm establishments	
	Full-time	Part-time	Full-time	Part-time
Paid				
Holidays	92	47	84	28
Vacations	96	55	88	29
Personal leave	21	10	11	4
Lunch period	8	2	8	5
Rest time	67	56	48	27
Funeral leave	80	39	47	11
Jury duty leave	86	45	54	13
Military leave	54	14	21	3
Sick leave	67	30	47	10
Maternity leave	2	1	2	1
Paternity leave	1	(1)	(1)	(2)
Unpaid				
Maternity leave	37	19	17	4
Paternity leave	26	14	8	2
Sickness/accident insurance	45	19	26	10
Wholly employer financed	33	12	17	4
Partly employer financed	11	7	9	6

Table 1. Percent of full-time and part-time employees in large/medium and small establishments participating in selected employee benefit programs in 1991 for large/medium establishments, and in 1990 for small establishments—Continued

Employee benefit program	Employees, lg/med establishments		Employees, sm establishments	
	Full-time	Part-time	Full-time	Part-time
Long-term disability insurance	40	3	19	(1)
Wholly employer financed	31	3	16	(1)
Partly employer financed	9	1	3	(1)
Medical care	83	28	69	6
Employee coverage:				
Wholly employer financed	41	12	40	5
Partly employer financed	42	16	29	2
Family coverage:				
Wholly employer financed	26	10	22	3
Partly employer financed	57	18	46	4
Dental care	60	18	30	3
Employee coverage:				
Wholly employer financed	35	10	17	2
Partly employer financed	25	8	12	1
Family coverage:				
Wholly employer financed	26	9	11	1
Partly employer financed	34	9	19	1
Life insurance	94	31	64	6
Wholly employer financed	80	22	53	6
Partly employer financed	14	9	11	1
All retirement	78	40	42	10

(1) Less than 0.5 percent.
(2) None found in sample.
Source: Employee Benefits in Medium and Large Private Establishments, 1991, Bulletin 2422, BLS; Employee Benefits in Small Private Establishments, 1990, Bulletin 2388, Bureau of Labor Statistics.

A BLS study determined proportions of workers in 1987 employed by establishments providing specified benefit plans, but did not ascertain the proportions who had achieved the minimum requirements to be eligible to receive certain benefits. Because of their intermittent work schedules, temporaries often have more difficulty than permanent staff in meeting eligibility requirements related to length of service. Only about one-fourth of the temporary workers were in establishments paying at least part of the cost of hospitalization, surgical, medical, and major medical insurance plans; most of these workers could qualify for initial coverage by working fewer than 500 hours.

With respect to benefits, it is important to focus for a moment on the importance of health care reform to this whole issue. The sky-rocketing cost of health care and health insurance has been cited as a major incentive for employers to downgrade full-time permanent positions into contingent jobs. A new health plan that would provide Americans with the security of knowing that they have health coverage even if they lose or change jobs is likely to have a significant effect on the contingent work force.

WHAT IS THE MAKEUP OF THIS POPULATION BY SEX AND AGE?

Women dominate the contingent work force. For example, in 1992 there were 20,572,000 part-time workers, of whom two-thirds (13,664,000) were women. Table 2 provides data on employment in the help supply services industry (which includes all temporary help supply services employees and headquarters staff of employee leasing organizations) by sex between 1982 and 1992. The data indicate that the industry has grown by 13.1 percent per year while total civilian employment grew by only 1.7 percent per year between 1982 and 1992. Although the rate of growth for men in the industry, at 14.3 percent per year, was steeper than the growth for women, at 12.3 percent, women still far outnumber men in absolute terms.

Table 2. Help supply services (SIC 7363) employment by sex 1982–92

Employment (number in thousands)

Year	Women	Men	Total
1982	258.9	158.1	417.0
1983	305.5	182.6	488.1
1984	399.4	241.1	642.5
1985	445.1	286.9	732.0
1986	508.8	327.7	836.5
1987	588.4	400.5	988.9
1988	670.5	455.4	1,125.9
1989	721.8	494.0	1,215.8
1990	761.7	526.5	1,288.2
1991	729.8	538.6	1,268.4
1992	825.3	601.2	1,426.5

Source: Bureau of Labor Statistics, U.S. Department of Labor, Current Employment Statistics Survey.

A 1989 survey of temporary employees conducted for the National Association of Temporary Employees, to which 2,508 responded, found that 80 percent were female and the majority (57 percent) were young (ages 16–34). Note: 28 percent were 16–24 years of age, 29 percent were 25–34, 20 percent were 35–44, 13 percent were 45–54, seven percent were 55–64, and 2 percent were 65 and over.

HOW AND WHY HAS THIS TREND DEVELOPED?

U.S. firms sought to put into place a variety of cost-cutting and flexibility strategies after supplementing their "lean staffing" with contingent workers who can move in and out of firms as needed and at a lower cost than permanent workers. Many firms are now relying more heavily on part-time and temporary workers and contracting out for services previously performed in-house.

WHAT ARE THE PROBLEMS WITH CONTINGENT WORK?

Some commentators see the constellation of part-time, temporary, and contract work as weakening the working relationship between employers and employees, leading to an erosion of employee rights and protections. Often, contingent workers do not receive fringe benefits, do not have union representation, and are not protected by labor laws which protect full-time permanent workers.

CONCLUSIONS

As we look to the future, we must address what kind of an America we want to live in. The most valuable resources of a nation are the skills and innovativeness of its people.

We see, as a result of the increased use of contingent workers, short-term gains for firms cutting labor costs. This can end up in long term costs for the nation's work force if we do not support, through a system of life-long education and training, our most important national asset.

Workers with insecurity have little attachment or responsibility to their employers. Productivity, quality of service, attendance, motivation and morale may be threatened when the tie between employer and employee is weakened.

There is a role for public policy in shaping a work force that maintains the advantages of flexibility without eroding the quality of responsible employer-employee relationships. We look forward to the President's health care plan as an outstanding example of policy that will provide security to employees and stem the high costs that have beset business, particularly small business. Other policy proposals directed particularly to contingent workers have been advanced that merit serious study. It would be premature for us to take a position on any particular solution or solutions at this time.

In the months ahead we will be exploring with other agencies in the Department of Labor how the laws the Department administers apply to and have an impact on the various workers.

We look forward to working with this committee on our many common concerns for the American worker.

The Women's Bureau also has in production a fact sheet on alternative work patterns of women and a chapter in its soon to be released handbook on women workers. This information serves to inform employers, policymakers, researchers and women themselves about the status of contingent workers.

Senator METZENBAUM. Thank you very much, Ms. Crockett.

The committee will take a 1 minute recess. I have a phone call that I must take.

[Short recess.]

Senator METZENBAUM. Dr. Appelbaum, please proceed.

Ms. APPELBAUM. Thank you very much for inviting me here today. The other speakers, especially the first panel, have discussed the terrible burdens that contingent work arrangements place on workers who want and need regular jobs. My remarks are addressed to the burdens that such arrangements place on the U.S. economy, and I was very interested in your opening remarks. I think that much of what I have to say today will just expand on those.

I think we all know that for the last two decades, U.S. companies have faced sharply rising competition in world and domestic markets, and that American companies face a difficult choice as they try to adjust to this new competition. The choice has been succinctly described as the choice between high skills and low wages.

Unfortunately, the legal and institutional framework of the United States provides few supports for companies that want to become high-performance workplaces, and many incentives that push firms in the direction of a low wage strategy. The results for the U.S. are negative; the results are negative on all counts.

Domestic competition from companies that use contingent workers as part of the low wage strategy undermines the ability of American producers to undertake the difficult transition to high performance work systems that can compete worldwide in markets that value quality, service, and timeliness. These markets have become increasingly important for American producers. Asked in a recent survey to identify the single most important competitive factor for their products, 65 percent of American manufacturing firms report that it is quality, speed, or service.

I would just like to say at the outset that I am not opposed to part-time or temporary employment arrangements that are designed to meet the needs of employees and firms for flexibility in scheduling hours of work. That is not a problem. The problems arise when managers utilize part-time, temporary and subcontract employment instead, as a strategy to reduce overall labor costs by marginalizing part of the work force in order to spend less on payroll benefits, social insurance, and training.

U.S. companies have responded to the competitive pressures by adopting a wide range of strategies—some designed to enhance performance, and others to cut costs. The economic significance of these cost-cutting strategies extends beyond their direct effects on contingent workers, however. In a recent study that I did for the Sloan Foundation, I found that U.S. firms that adopt high performance work systems face very high up-front costs in undertaking this transformation. The design phase when you are trying to reorganize the way in which you produce output is extremely time-intensive in terms of the time of top managers, professionals, engineers and so on. In addition, front-line workers require extensive training that goes far beyond the 1.5 percent of payroll that American companies on average invest in their workers.

And firms incur all of these higher costs in advance of the gains in productivity and efficiency that will come to them and the American economy somewhere down the road.

In that period when they are undergoing these very high up-front costs, they are extremely vulnerable to competition from companies that have adopted a low wage strategy that then can undermine companies in that initial difficult period when they need to spend so much investing in themselves and in their workers in order to reach a high-productivity growth path, a high wage, high skills way of doing work. They are especially vulnerable to predatory pricing by low wage competitors.

What we see is that while transformed systems are diffusing very slowly in the U.S.—it is not that no companies have managed to do it, and we could discuss that at another time—but this transformation is diffusing very slowly while the evidence continues to mount that many firms are turning to contingent employment arrangements as a strategy to cut costs.

I will just State a few brief points to help make that point. Historically, involuntary part-time employment acts as a barometer of the business cycle. Involuntary part-time employment rises when the economy goes into recession, falls as the economy recovers and workers are able to move out of part-time and into full-time jobs. In this economic recovery, in contrast, involuntary part-time employment has continued to increase. In the 26 months since this recovery began, involuntary part-time employment rose by 573,000 workers, bringing the total increase in involuntary part-time employment since the recession began in July of 1990 to 1.5 million workers.

A second point, of course, is that the number of temporary and leased employees has risen. You have the chart, and other people have pointed out what the numbers are. I'll just say that the increase during the current recovery has been 425,000 workers. That is about 20 percent of the total increase in payroll jobs for an industry that is about 1.5 percent of the U.S. economy. It counts for such a large percentage of the increase in payroll employment during this recovery.

But since what we are concerned about is the economy, I think it is important to ask what has happened to full-time employment. Since the bottom of the recession in March of 1991—that is, during the period of the recovery—the household survey shows a total increase in private sector jobs of a little less than 1.6 million. If we subtract out part-time workers and self-employed workers and ask what is the number of full-time jobs that business has been creating, we find that it is 945,000 and that this is still 60,000 below where we were when the recession began. And I should point out that most of those gains came in the first year of the recovery.

In my written testimony, I have suggested a number of policy changes that would discourage the improper use of part-time and contingent workers while allowing for the appropriate use of such workers.

[The prepared statement of Ms. Appelbaum follows:]

Prepared Statement of Eileen Appelbaum[1]

Introduction

For the last two decades, U.S. companies have faced sharply rising competition in world and domestic markets. The loss of market share and jobs in industries ranging from automobiles to aerospace has driven home the message that business as usual is no longer sufficient to make U.S. firms competitive. The choice that American producers face as they adjust to the new realities of the marketplace has been succinctly described as a choice between high skills and low wages. Unfortunately, the legal and institutional framework of the U.S. provides few supports for companies that want to become high performance workplaces, and many incentives that push firms in the direction of a low wage strategy. The results, for the U.S., are negative on all counts: employment security and living standards have declined for the overwhelming majority of American workers; long-term productivity gains for the economy continue to be meager; and after 8 years of a falling dollar, our trade deficit remains stubbornly high.

Other speakers who have testified today have discussed the terrible burdens that contingent work arrangements place on workers who want, and need, regular jobs. My remarks are addressed to the burdens that such arrangements place on the U.S. economy. Domestic competition from companies that use contingent workers as part of a low wage strategy undermines the ability of American producers to undertake the difficult transition to high performance work systems that can compete worldwide in markets that value quality, service, and timeliness. These markets have become increasingly important for American producers. Asked in a recent survey to identify the single most important competitive factor for their products, 65 percent of American manufacturing firms report that it is quality, speed, or service (GrantThornton 1991).

I want to emphasize at the outset that I am not opposed to part-time or temporary employment arrangements that are designed to meet the needs of employees and firms for flexibility in scheduling hours of work. Problems arise when managers utilize part-time, temporary and subcontracted employment instead as a strategy to reduce overall labor costs

---

[1]This testimony draws on previous analyses by Eileen Appelbaum and Virginia DuRivage that appear in DuRivage (ed.) 1992)

by marginalizing part of the workforce in order to spend less on payroll, benefits, social insurance, and training. The remedies I suggest will reduce employer incentives to increase the use of *contingent* employment as part of a misguided managerial strategy to improve competitiveness in global markets by driving down wages and benefits, but they will still allow firms to meet legitimate requirements for peak-hour staffing or off-peak use of equipment by employing *regular* part-time or temporary workers on the same terms and conditions of employment as full-time employees.

Temptations of the Low Wage Path

U.S. firms have responded to intensified competition by initiating a wide range of strategies, some designed to enhance performance, and others to cut costs. Despite widespread experimentation with innovative work practices -- recent surveys indicate that more than 80 percent of firms have at least one such practice somewhere in the company -- only a small number of firms have made the commitment to substantially transform their work systems. It is much more common to find firms adopting cost cutting strategies. These strategies typically combine the use of more flexible technologies, the cross training of some skilled workers in the context of a general deskilling of frontline workers, and the increased use of subcontracting and contingent work arrangements to achieve flexibility. That is, many American firms are trying to become more competitive through a combination of a technological quick fix and a cheapening of labor, with the occasional problem-solving team or quality program tacked on. As a result, an increasing number of workers are employed in contingent jobs paying lower wages and few benefits, and without the access to basic health care and training opportunities traditionally provided by firms for full-time workers with permanent attachments to the labor force.

The economic significance of these cost-cutting strategies extends beyond their direct effects on contingent workers, however. A recent EPI study (Appelbaum and Batt, 1993) found that U.S. firms that adopt high performance work systems face very high up-front costs in undertaking this transformation. The design phase of such a transformation makes intensive use of firm resources and the time of top managers and professionals. Frontline workers require extensive training in job skills, quality skills, and team-building skills at a

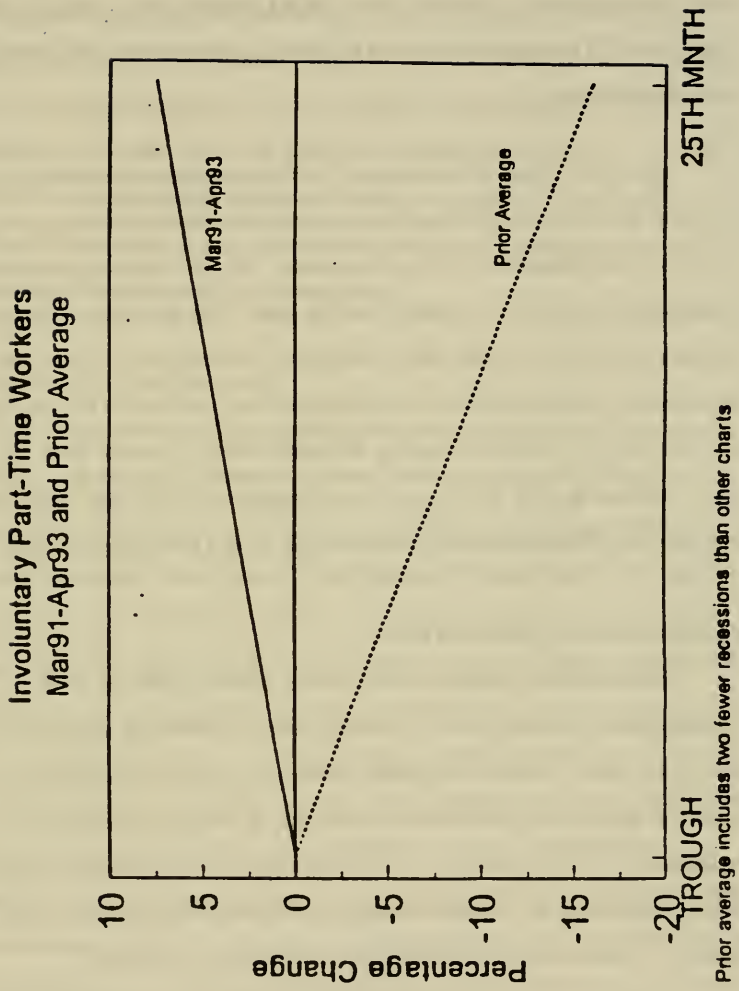
cost far in excess of the 1.4 percent of payroll that U.S. firms allocate on average for training. Firms incur all of these costs in advance of the gains from higher quality and/or lower cost in a transformed system.

The adoption of cost cutting strategies by low wage competitors can undermine firms while they attempt to make fundamental changes, before the performance improvements made possible by these changes have had time to materialize. Given the very high start-up costs of organizational change in the U.S. context, firms that adopt a high performance strategy are especially vulnerable in the initial stages of this process. Predatory pricing by low wage competitors can threaten the survival of the transformed firms, or at least of the innovations they have adopted. The danger in allowing this "market solution" to prevail is that, over time, it threatens the ability of U.S. producers to compete against international competitors who have adopted high performance work systems and are on a high skills growth path.

Contingent Workforce Continues to Grow

While transformed production systems continue to diffuse slowly, the evidence continues to mount that many firms are turning to contingent employment arrangements as a strategy to cut costs. Evidence on contingent employment comes from household data on involuntary part-time employment and from payroll data on temporary employment and leasing agencies. Data on firms' own pools of temporary or on-call employees or their use of contract employees are not collected on a regular basis in either the household or payroll surveys. The evidence reviewed here, therefore, is only the tip of the iceberg.

Involuntary Part-Time Employment Historically, involuntary part-time employment has acted as a barometer of the business cycle. Involuntary part-time employment has risen as the economy went into a recession, and fallen during the period of economic recovery. Thus, involuntary part-time employment increased from 3.4 million workers in 1979 to a peak of 6 million in 1983 as a result of the 1981-82 recession. It fell steadily during the remainder of the 1980s, reaching 4.9 million in 1990. If we examine the last four recessions and recoveries, we observe that in the first two years of the recovery, involuntary part-time employment fell on average at an annual rate of 8.5 percent.



In contrast, in the current recovery involuntary part-time employment has continued to increase. In the 26 months since this recovery began (that is, through May 1993), involuntary part-time employment rose by 573,000 workers, an average annual increase of 3.5 percent. This is in addition to the increase in involuntary part-time employment of 929,000 that occurred during the recession, bringing the total increase in involuntary part-time employment since the recession began in July 1990 to 1.5 million workers. The contrast between the behavior of involuntary part-time employment in this recession and in previous recessions is illustrated in the accompanying figure.

Temporary and Leased Employees Firms that have divided their workers into a "core" of permanent employees and a "ring" of contingent employees use temporary and leased employees as a buffer to provide employment security for workers in the core. As a result, temporary employment is expected to decline in a business downturn and to pick up as the economy recovers. This is, in fact, what has happened. There were 1.3 million temporary and leased employees hired through employment agencies in July 1990. This number fell during the recession, to just under 1.2 million in March 1991. Since then, the number of temporary and leased employees has risen, to over 1.6 million in April 1993 (the latest available data). The increase during the recovery has been 425,000 workers, about one fifth of the total increase in payroll jobs over this period.

Full-Time Private Sector Employees Since we are concerned with the effect on the economy, it is important to ask what has happened to the number of full-time employees hired by businesses during the current recovery. Since the trough of the recession in March 1991, the household survey shows a total increase in private sector jobs of 1,577,000.[3] Subtracting out part-time and self-employed workers leaves a net gain of 945,000 full-time employees. The number of full-time workers employed by businesses is still 60,000 below its pre-recession peak in May 1990.

All of the gains in the number of full-time private sector employees occurred in the first year of the recovery. Employment data for the last year show that there was a net *loss* of 141,000 full-time private sector jobs between May 1992 and May 1993.

Clearly, this recovery differs from previous post-war recoveries. While it is still too early to draw definitive conclusions, it appears that increases in contingent work and declines in full-time hiring by businesses are no longer just a cyclical phenomenon. Increasingly, firms appear to be responding to competitive pressures by adopting cost-cutting strategies that improve the bottom line in the short run, but do not lead to the continuous improvements in quality and efficiency that are required to remain competitive in world markets.

---

[3]The household data do not include information on temporary or leased employees. While the household and payroll surveys are not entirely comparable, and some temporary workers may be part time, the data from the payroll survey reported above suggest that a substantial proportion of the gain in payroll jobs is in temporary employment.

Removing the Incentives for Increasing Contingent Employment

Public policies in the U.S. were designed to provide equitable treatment and safeguards for full-time workers with permanent attachments to the workforce. As competitive pressures on American firms have increased, these policies have had the perverse effect of *discouraging* firms from reorganizing the production process and investing in the skills of their workers in order to improve productivity and respond flexibly to market conditions, and *encouraging* the increased use of contingent workers for short term improvements in the bottom line. Employer surveys show reducing labor costs is a primary reason for hiring contingent workers (BNA 1986). Policies to address the problems of contingent employment should remove these perverse incentives, and reduce the temptation of firms to pursue a low wage, rather than a high skill, strategy for competitiveness.

Wages Hourly wages of most part-time and temporary workers are, on average, 10 to 15 percent below those of full-time employees in similar jobs. Some employers, in the public as well as the private sector, pay contingent part-time or temporary workers as little as half the hourly wage paid to full-time employees doing the same job (Goldstein 1990; Nine to Five 1986). This type of discrimination, which disproportionately affects women and minorities, is not illegal in the U.S.[3] Civil rights laws shoud be amended to ensure that workers do not suffer discrimination in hourly pay rates as a result of their work status. Employers who discriminate against contingent workers should not have an unfair advantage over those who pay part-time and temporary workers the same wage rates as full-time workers performing jobs with similar characteristics.

While only five percent of workers overall are minimum wage workers, more than a quarter of part-time workers earn the minimum wage. In the 1960s and 1970s a worker earning the minimum wage had an hourly wage equal to one-half the average wage of a non-supervisory worker. Since 1979, the spread between the minimum wage and average wage has increased. Today, minimum wage workers earn just 40 percent of the average wage, increasing incentives for firms to utilize contingent workers. Congress should follow the

[3]Workers in Australia, Austria, Belgium, Denmark, Finland, France, West Germany, Norway, Portugal, Spain, and Sweden are assured by official labor standards or current practice of earning equal hourly pay for work of equal value. Recent legal decisions have begun to extend this protection to all workers in the European Community.

lead of several states that have raised their minimum wages to adequately reflect increases in the cost of living over the last decade. An increase in the minimum wage to one-half the average wage (currently $5.30 an hour) should be phased in gradually, after which the minimum wage should be permanently indexed to the rate of inflation.

Benefits Unlike workers in nearly all other industrialized countries, health insurance for American workers is tied to employment contracts, and is not a right of citizenship or residence in the U.S. One response of employers to escalating health care costs has been to hire contingent workers who receive no health benefits, and to shift the health care costs of the rising number of uninsured to other firms and workers, and to taxpayers. Three in four part-time workers do not receive health insurance directly from their jobs. The Clinton administration is currently considering a number of proposals for reforming the health care system and extending health coverage to all Americans. There are essentially three ways in which health insurance can be extended to contingent employees: employers pay insurance premiums for full-time, permanent employees and contingent workers are covered along with those who do not work by public health insurance; employers are required to pay health insurance premiums for all employees; employers are required to contribute a fixed percentage of payroll to finance health insurance for their employees. The first option continues to provide incentives for employers to increase hiring of contingent workers, since their health care costs will be paid by taxpayers. The second option provides disincentives for firms to employ part-time or temporary workers by raising the hourly costs of such workers relative to full-time workers. The likely result is the substitution of extended hours of overtime work by full-time employees for hiring of regular part-time workers. The third option assures that firms do not have incentives to increase hiring of *contingent* part-time workers or decrease hiring of *regular* part-time workers. The financing mechanism for the administration's new health care program should be designed so that it does not provide incentives for employers to hire contingent workers or disincentives for them to utilize regular part-time workers.

Pensions Tax policy reforms in the 1980s strengthened pension benefits for contingent workers.[4] Nevertheless, a number of loopholes in these tax laws allow employers to exclude many part-time and temporary workers from coverage. The requirement of a year's service to be eligible for pension benefits excludes most temporary or casual workers; the exclusion of those not working at least 1,000 hours a year limits pension coverage for part-time workers. Four in five part-time workers do not receive a private pension from their employer. Requiring pro-rated pension benefits for part-time or temporary workers would reduce incentives for employers to substitute contingent workers for full-time or regular part-time employees.

Job Training In the past, training policy in the U.S. focused almost entirely on disadvantaged workers. High performance workplaces depend on a skilled workforce that produces continuous improvements in production processes. This means training must be expanded to meet the needs of all frontline workers. Both part-time and full-time workers must have opportunities to return to formal training as needed throughout their lifetimes, and to integrate this process into the normal course of their working lives. The Economic Policy Institute has published several recent studies that address the larger issue of a training agenda for the U.S. (Batt and Osterman 1993; Lynch 1993). As one element of an overall training agenda, a play or pay training levy set at 1.5 percent of payroll has the effect of encouraging firms to provide training for *all* incumbent employees -- part time as well as full time.

Social Insurance Several changes in social insurance provisions would reduce some of the social and economic insecurity of contingent workers.

Workers who leave the workforce to care for family members should not have to jeopardize economic security in their old age. Such workers should be given "caretaker credits," credits toward Social Security during years they leave the labor force or reduce hours of work in order to care for a family member.

---

[4]The Tax Equity and Retirement Act of 1982 requires a company with a pension plan contracting workers from a leasing or temporary agency for more than 12 months to offer pension benefits to those workers. The number of years an employee must work in order for his or her pension to be vested has been reduced for most workers from ten years to five. The Employment Retirement Income Security Act (ERISA) provides standards for private pension funds.

Federal standards regulating which employees are covered under state unemployment compensation programs do not distinguish between part-time, full-time, and temporary employees. Individual states, however, have full discretion over setting minimum earnings and work requirements to determine benefits eligibility. Benefits are generally restricted to workers seeking full-time work. The result is that nearly all temporary workers and many part-time workers fail to qualify. Federal standards for unemployment insurance eligibility should be established in order to reduce state variability and increase access of part-time and temporary workers to unemployment insurance.

Conclusion

The U.S. legal and institutional framework provides employers with incentives for taking the low wage path rather than investing in workers to improve the efficiency of American companies and their ability to compete in quality-conscious markets. Eliminating unfair cost advantages for firms that exploit contingent workers an important component of policies that level the playing field for managers who want to adopt a high performance competitiveness strategy.

Bibliography

Appelbaum, Eileen and Rose Batt. *Transforming the Production System in U.S. Firms.* Washington, DC: Economic Policy Institute, 1993.

Batt, Rosemary and Paul Osterman. *Workplace Training Policy: Case Studies from State and Local Experience.* Washington, DC: Economic Policy Institute, 1993.

Bureau of National Affairs. *The Changing Workplace: New Directions in Staffing and Scheduling.* Washington, DC: BNA, 1986.

DuRivage, Virginia L. *New Policies for the Part-time and Contingent Workforce.* Armonk, NY: M. E. Sharpe Inc., 1992.

Goldstein, Ralph. Director of Labor Education, National Association of Letter Carriers. Interview in June 1990.

GrantThornton Accountants and Management Consultants. *GrantThornton Survey of American Manufacturers: A National Study of Executives' Attitudes and Opinions Towards Quality and Global Competition.* New York: GrantThornton, 1991.

Lynch, Lisa. *A National Training Agenda: Lessons From Abroad.* Washington, DC: Economic Policy Institute, 1993.

Nine to Five. National Association of Working Women. *Working on the Margins: The Growth of Part-Time and Temporary Workers in the United States.* Cleveland, OH: Nine to Five, 1986.

Senator METZENBAUM. Thank you very much, Ms. Appelbaum. I appreciate your statement, and I might say that all statements will be included in their entirety in the record.

Our next witness is Helen Axel, of Lebanon, NJ, a management research consultant.

Ms. AXEL. Thank you very much, Senator.

As you said, I am a management research consultant and a former research director at the Conference Board, an independent business research and information service located in New York.

I am here today to report on a study conducted by Stanley Nollen, a professor at Georgetown University's School of Business Administration, on the cost-effectiveness of contingent labor. Professor Nollen, who is unable to be here today, has asked me to testify on his behalf, since I have participated in this research with him. I am submitting as written testimony a paper by Professor Nollen, which he will present tomorrow in New York at a Conference Board conference on "Reinventing the Workplace: New Perspectives on Flexibility in Tomorrow's Competitive Company."

Various witnesses before me have documented the recent rapid growth in contingent employment, and we have seen work forces in many businesses being reconfigured, by conscious intent or otherwise, into two distinct groups—regular or core employees and contingent workers.

Companies have traditionally adjusted the work hours of their regular employees with overtime and layoffs. By shifting more emphasis to an externalized work force, employers have found they can more easily adjust staffing levels in response to changing business conditions because of fewer legal constraints and paperwork. They also anticipate that contingent labor can improve job security for regular employees and, at least for the present, help control benefit costs.

Underlying the appeal of these apparent advantages for business is another important assumption that they make, that contingent employment is a cost-effective way to achieve the flexibility employers desire and need. This research calls into question the validity of that assumption for many kinds of contingent workers.

Professor Nollen's findings are based on the experiences of three companies that use contingent and regular employees in the same jobs. Information was gathered in field interviews and from company records on employment costs, turnover, and worker output. Case studies in the paper illustrate how costs and cost-effectiveness are measured in different work settings.

In brief, the findings show that, first, a company does not necessarily realize cost savings if it compensates contingent employees less than regular employees doing the same job, by paying lower wages, by providing fewer or no benefits, or by avoiding payroll taxes.

Second, certain characteristics of contingent workers, especially their typically high turnover, are likely to have a negative impact on their productivity and, ultimately, their cost-effectiveness.

And third, the cost-effectiveness of contingent labor depends not only on a relatively lower unit labor cost, but also on the amount of training, classroom or otherwise, needed and the amount of time the worker remains with the company.

More specifically, for contingent workers to be cost-effective, one or more of the following conditions must be present. First, the compensation differential between core and contingent workers must be sufficient to offset the costs of training and possible continued lower productivity of contingent labor. This means perhaps punitive wages, a punitive wage differential, or a very poor economy.

Second, the required training must be brief and low in cost so that the contingent workers achieve full productivity quickly and high turnover is not a problem. We are talking here about no-brainer jobs.

Third, turnover of contingent workers must be controlled and moderated to allow for sufficient time on the job so that the employer's training investments can be recovered over time through the output that the contingent workers produce.

I must stress here that these findings, based on a three-company experience, can only point out conditions under which contingent labor is cost-effective. They do not permit any conclusions that contingent employment is or is not cost-effective generally.

The findings go on to suggest several alternatives to achieve work force flexibility at the least cost for the company and equitable for the worker. One alternative is to make contingent work more cost-effective by reducing needless turnover. Companies can influence the change by improving the commitment of contingent workers, perhaps by offering short-term, renewable contracts, in other words, stabilizing their employment a bit, or by offering pay-for-performance compensation, partial benefits, and/or access to regular employment.

Second, the companies can look within the core work force for alternatives to achieve the flexibility they need. A number of options are possible here. You can create a cadre of regular part-time employees willing to vary weekly hours within preset limits. You can use work-sharing for full-time employees to cut hours in slack times. You can allow full-time workers to voluntarily reduce work time to achieve temporary cutbacks in hours. You can introduce annual hours contracts, as is being done in some European countries, for employees that contain preset limits and schedule variability. And alternatively, you can train for greater functional flexibility so that multiskilled employees can shift jobs to meet changing or peak demands.

I thank the committee for this opportunity to present these findings.

[The prepared statement of Ms. Axel follows:]

PREPARED STATEMENT OF HELEN AXEL

[My name is Helen Axel. I am a management research consultant and former research director at The Conference Board, an independent business research and information service located in New York.]

I am here today to report on a study conducted by Stanley Nollen, Professor at Georgetown University's School of Business Administration, on the cost-effectiveness of contingent labor. Professor Nollen, who is unable to be present at today's hearing, has asked me to testify on his behalf, since I have participated in this research with him. I am submitting as written testimony a paper by Professor Nollen which he will present tomorrow in New York at a Conference Board conference, Reinventing the Workplace: New Perspectives on Flexibility in Tomorrow's Competitive Company.

Various witnesses before me have documented the recent rapid growth in contingent employment. Work forces in many businesses are being reconfigured--by conscious intent or otherwise--into two distinct groups: regular or core employees and contingent workers. Contingent employment offers no job security and few if any benefits, unlike core employment which provides greater protection in these areas.

Companies have traditionally adjusted work hours of their regular employees with overtime and layoffs. By shifting more emphasis to an externalized work force, employers have found they can more easily adjust staffing levels in response to changing business conditions--because of fewer legal constraints and paperwork. They also anticipate that contingent labor can improve job security for regular employees and, at least for the present, help control benefit costs.

Underlying the appeal of these apparent advantages for business is another important assumption: that contingent employment is a cost-effective way to achieve the flexibility employers desire and need. This research calls into question the validity of that assumption for many kinds of contingent workers.

Professor Nollen's findings are based on the experiences of three companies that use contingent and regular employees in the same jobs. Information was gathered in field interviews and from company records of employment costs, turnover and worker output. Case studies in the paper submitted illustrate how costs and cost-effectiveness are measured in different work settings.

In brief, the findings show that:

- A company does not necessarily realize cost savings if it compensates contingent employees less than regular employees doing the same job--by paying lower wages, providing fewer benefits, and avoiding payroll taxes.

- Certain characteristics of contingent workers--especially their typically high turnover--are likely to have a negative impact on their productivity and, ultimately, their cost-effectiveness.

- The cost-effectiveness of contingent labor depends not only on a relatively lower unit labor cost, but also on the amount of training (classroom or on-the-job) needed and the amount of time the worker remains with the company. More specifically, for contingent workers to be cost-effective, one or more of the following conditions must be present:

  (1) the compensation differential between core and contingent workers must be sufficient to offset the costs of training and (possible) continued lower productivity of contingent labor;
  (2) the required training must be brief and low in cost so that contingent workers achieve full productivity quickly and high turnover is not a problem;

(3) turnover of contingent workers must be controlled (and moderated) to allow for sufficient time on the job so that employer's training investments can be recovered over time through the output that contingent workers produce.

(It should be noted that these findings, based on a three-company experience, can only point out conditions under which contingent labor is cost effective; they do not permit conclusions that contingent employment is or is not cost effective generally.)

The findings suggest alternative strategies to achieve work force flexibility at the least cost for the company and equitable for the worker:

- First, make contingent work more cost-effective by reducing needless turnover. Companies may be able to influence such change by improving the commitment of contingent workers through:
  - › short-term renewable contracts to contingent workers; or
  - › pay-for-performance compensation, partial benefits, and/or access to regular employment.
- Second, develop policies and programs to create more flexibility within the core work force. A number of options are possible:
  - › create a cadre of regular part-time employees willing to vary weekly hours within preset limits
  - › use work-sharing for full-time employees to cut hours in slack times
  - › allow full-time workers to voluntarily reduce work time to achieve temporary cutbacks in hours
  - › introduce annual hours contracts for employees that contain preset limits and schedule variability
  - › train for greater functional flexibility so that multiskilled employees can shift jobs to meet changing/peak demands

I thank the Committee for the opportunity to present this research, and welcome questions members may have.

EXPLODING THE MYTH: IS CONTINGENT LABOR COST-EFFECTIVE?

A Report from NEW WAYS TO WORK

by Stanley D. Nollen
Georgetown University

The Business Problem

Turbulent markets . . . . global competition . . . . changing technology . . . demanding customers . . . . workforce diversity . . . . skilled labor shortages --- all of these forces and more exert unrelenting pressure on companies to invent new ways to organize the workplace. Top priorities for managers are to expand flexibility and contain costs.

The flexibility that managers need is the flexibility to match the size of the work force to the continually fluctuating workload. Managers need to be able to quickly increase and decrease the number of people on the job or the number of hours they work. Maybe the business is cyclical, with peak loads at the beginning of the week or the end of the month or the 4th quarter of the year, or maybe some business units are irregularly phased out as new products are added.

How can flexibility in staffing and scheduling to meet business needs be achieved?

The Solution?

The traditional way to get workforce flexibility is to pay for overtime when demand is high and to layoff people when work is slack (at least in the U.S., although not in continental Europe or Japan). Overtime and layoffs have drawbacks, so lately a new possible solution to the workforce flexibility problem has gained popularity: *contingent workers*.

> Contingent workers are people who have little or no attachment to the workplace where they are employed. When and how much they work depends on the employer's immediate need for them. The employer incurs no obligation to them beyond paying them for the time they work. Contingent workers are temporary workers from agencies or in-house company pools, or short-term contract workers, or in some cases part-time workers.

The use of contingent labor grew tremendously in popularity during the 1980s. The contingent workforce increased twice as fast as the total workforce, and now accounts for a quarter to a third of all employment. Contingent labor is a very important feature of the employment landscape.

Along with the rise of contingent labor, a staffing model called "core-ring" was invented. The core consists of regular employees, mostly full-time, who feel attached to their employer and who expect long-term employment to be continued. They receive good pay and benefits and career development, and in turn expect to undergo retraining and relocation as needed by their employer. The ring consists of contingent workers. Changes in workforce size occur in the ring so that in theory the jobs of core employees are buffered and protected.

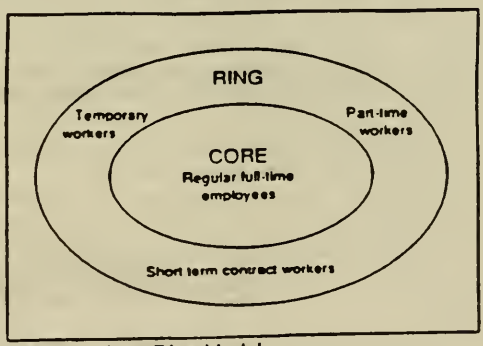


Figure 1. Core-Ring Model

Why are contingent workers so popular?

Contingent workers are popular because managers believe they reduce costs. For example:

> "... and cost conscious companies are turning to a contingent work force -- part-timers, temporaries, contract labor -- to avoid soaring fringe benefits and to increase profits." - *Wall Street Journal*, March 10, 1993

Contingent workers can reduce costs in three ways:

First, managers can add contingent workers day-by-day as needed, and managers can cut contingent workers just as quickly. Contingent workers provide numerical flexibility. And because they let companies match work force to work load, contingent workers avoid the extra costs of idle people during slack times.

Second, many managers believe that contingent labor is cheaper. Compared to regular full-time core employees, temporaries and part-timers might be paid a lower wage rate or fewer benefits. Since they are not employees, contingent workers don't adversely affect unemployment insurance costs. Their total compensation is likely to be lower than core employees.

Third, managing contingent workers is easier in some ways. Hiring, firing, and appraising temporaries and part-timers doesn't require the paper work needed for core employees.

The Issues

The growing use of contingent labor raises several critical issues for managers. It is not clear that contingent workers are the ideal solution to the workforce flexibility problem.

> *Is contingent labor cost effective?*

To find out if contingent workers are cheaper than core employees and to know if they save money for the company, it is not sufficient to just look at wage and benefit payments. The right question to ask is: Is contingent labor cost effective? To answer this question, we need to know something about the job performance of contingent workers and about other employment costs aside from wages and benefits.

> *What is best-practice management for contingent labor?*

Of course, there will never be a single right answer to the cost effectiveness question. It all depends -- on who the contingent workers are, what their jobs are like, and on what the labor market is like. Under what conditions is contingent labor likely to be more vs. less cost effective than core employment? How does their cost effectiveness depend on how they are managed?

> *Can flexibility be found among core employees?*

Contingent labor is not the only way to achieve workforce flexibility. If contingent labor is not the sole source of flexibility, can regular employees be the source of variation in hours of labor supplied to the company in creative ways other than traditional overtime and layoffs?

> *How can contingent labor be made equitable for workers?*

Employers' costs and profits are not the only considerations driving employment practices. Concerned managers want to know if contingent workers are treated equitably. While some people prefer work with no attachment to an employer, others need the benefit coverage and training that come with core employment. What can managers do to treat part-time and temporary workers equitably?

How to Determine the Cost-Effectiveness of Contingent Labor

The cost-effectiveness of workers refers to how much value of output they produce compared to how much it costs to employ them. High-wage labor can be cost-effective if it is also high-output labor; low-wage labor might not be cost-effective if it is low-output labor. Cost-effectiveness depends not only on wages and benefits, but also on productivity.

The costs of employing labor go beyond wages and benefits. New employees have to be recruited, hired, and trained to do a specific job. Training might include formal classroom sessions, or it might be on-the-job training. The amount of training required might be substantial if the job is complex, or it might be minimal if the job is simple or the new employee has prior experience doing the same type of job.

Costs such as training are up-front investments in the future productivity of employees. After training is completed, the company expects to recover its training investment via increased productivity from its trained workers. After training, the value of output that workers produce for the company should exceed the cost of their wages and benefits. But it takes time for the training cost to be recovered, and so the length of time that contingent workers stay with the company can be quite important to their cost-effectiveness (see Figure 2 below).

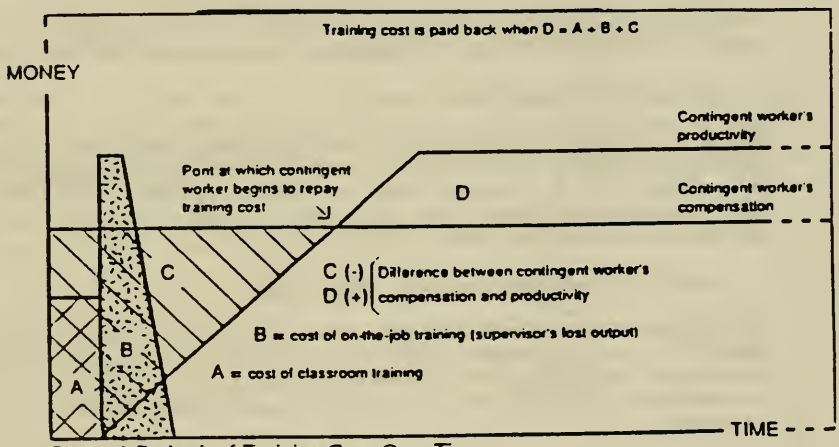


Figure 2 Payback of Training Costs Over Time

To sum up, the variables that determine the cost-effectiveness of contingent labor are:

- Productivity – output per unit of time
- Wages and benefits (or agency costs for temporaries)
- Other employment costs such as training
- Time on the job or turnover.

The way in which data for these variables are handled to get a numerical answer to the cost-effectiveness question – the computational methodology – is explained in the accompanying Guidesheet.

Fortunately, companies have data for most of these variables. They are routinely collected through human resource information systems. Wages and benefits costs and agency fees are well-known, and so is time on the job or turnover. Training costs can be figured once the amount and type of training is described (see the Guidesheet). Productivity is known for some types of jobs such as data entry operators for whom records of physical output per unit of time are automatically generated. In other cases without easily measurable output, performance appraisals might serve as productivity measures.

Case Examples:
Is Contingent Labor Cost-Effective in Practice?

To illustrate the issue of whether or not contingent labor is cost effective, we summarize the main results from case studies in three companies. The information in these case studies comes from personal interviews with several managers in each company and from company management information systems. Data from each company are reported in tabular form in Fig. 3 at the end of this report.

COMPANY A

Company A is a large financial institution. It employs hourly-paid part-time people in its operations division to do 10-key data entry work. Though these people are on the company payroll, their hours of work in the afternoon and evening can change daily to meet the daily fluctuation in incoming work. Both salaried part-time and full-time employees also do this work.

Wages. After an initial training period, new hourly part-timers are paid at the same hourly rate as their core employee counterparts, but they also get a 10% premium as a partial substitute for benefits. All employees can earn incentive pay for output that exceeds a certain threshold. Total compensation for contingent employees is 13.7% less than for core employees.

Productivity. Managers' data suggest that contingent workers are also less productive – 7.9% less in the work unit we studied.

Unit labor cost. Because the productivity shortfall is smaller than the wage saving, the unit labor cost of contingent labor is lower by 5.8%.

Training. In addition, the company spends about $940 training each new contingent worker. Given their wages and productivity, it takes about 20 months for the company to recover its training investment. Since the average contingent worker stays on the job only 14 months, training is an extra cost of employing contingent workers.

Cost-Effectiveness. Contingent workers are not cost-effective as they are used in data entry jobs in this company.

COMPANY B

Company B is also a large financial institution. It also has 10-key data entry work to do in its operations division. However, this company uses temporary workers from an agency on a part-time basis to cope with its fluctuations in work load. Regular full-time employees also do these jobs.

Wages. The wage rate received by the temporaries is less than the regular employees get by about 12% (raises based on merit can close the gap to about 3%). The temporaries get no benefits except those provided by their agency. The fee paid to the agency by the company is the same as the benefit cost for regular employees, and so overall, the company pays less for temporaries.

Productivity. Detailed productivity records show that the temporaries produce 7% less output per hour than regular employees, after accounting for differences between the two groups in the shifts and number of hours they work.

Unit labor cost. Because the productivity shortfall is not as big as the wage saving, the unit cost of contingent labor is lower by 5%.

Training. Training costs are low – only about $260 per new contingent worker – because the agency supplies people with some prior data entry experience. Since it takes only four to six months for training costs to be recovered while the average temporary stays on the job about seven months, training is a good investment.

Cost-Effectiveness. Since unit labor cost is lower and training is not an extra cost, contingent labor is cost-effective for data entry jobs in this company.

COMPANY C

Company C is a large electronics company. It uses temporary workers from an agency to do a variety of electronics assembly jobs. Because much of the business is driven by big orders, the work load fluctuates over the year as orders are received and fulfilled. Regular full-time employees also do this work.

Wages. Temporaries get about 13% less in hourly wages than regular employees doing the same work (merit-based raises can reduce the gap to 6%). They get no benefits except those provided by their agency. The agency fee is 24% of the wage rate, while the benefit cost for core employees is 28.5% of base wages. Overall, temporaries cost the company 16% less than regular employees.

Productivity. Because the work is done in teams, the company does not track individual output. In any event, it would be hard to define an exact physical output. No formal performance appraisals are done because the workers are temporary. However, managers are concerned that the coming and going of temporary workers detracts from their teamwork method.

Unit labor cost. The unit labor cost of contingent labor is optimistically 16% less than core employees, if productivity is equal.

Training. Because this is a high-technology business, training costs are high – about $2,390 per new worker including classroom, on-the-job, and continuing classroom training. One year is required to pay back this training cost, but in fact, the temporaries stay with the company only about eight months, so the company's training investment is not recovered.

Cost-Effectiveness. Contingent labor is not cost effective as electronics assemblers in this company because their high training cost that is not recovered exceeds their lower unit labor cost.

Managing Flexibility - 1
Parameters for Decisions

What do company experiences show us about the use of contingent labor to achieve staffing and scheduling flexibility? What options are available?

First, *contingent workers are probably going to be a little less productive than core employees.* Most jobs are performed better with some experience, and contingent workers probably aren't going to have it. Most workplaces work better with some stability. Contingent workers don't offer that.

Second, most new workers in most jobs need some training in addition to experience to be productive. *The higher the training cost, the more important it is that the company keep the worker on the job* or at least in the company for some length of time.

> This leads to a fundamental dilemma. In many cases, contingent workers must stay on the job a reasonable length of time to be cost-effective. Yet contingent workers by definition have no attachment to the company and are not expected to stay on the job a long time. They come and go at managers' discretion and of their own volition.

Third, it is possible to make contingent labor cost-effective even when they turnover rapidly if they are paid less than core employees and don't need much training. But *the low-wage, low-training use of contingent labor raises equity issues*, which are outlined below.

Fourth, the prospect that contingent labor is not cost-effective (or inequitable if it is) leads us to look for other options. Of course, we could simply say that flexibility has its price tag -- coping with fluctuating work loads costs money. Maybe contingent labor that is not cost-effective is still cheaper than the alternative of keeping on excess core employees or laying off core employees during slack periods. But we can look for better ideas. *The two main options are to manage contingent labor better so that it is cost-effective (and equitable), or to find flexibility among core employees.*

Managing Flexibility - 2
Achieving Cost Effectiveness

If contingent workers are going to be used cost-effectively, either their non-wage and benefit costs must be very small -- they must be trained and experienced before they come to the job -- or they must stay on the job a reasonable length of time. Two approaches to the turnover problem are available:

- Hire people on short-term contracts of from three months (renewable) to one year when the work setting permits.

- Consider a variety of employment practices designed to get a little commitment and increase contingent workers' interest in staying, such as:

  - Link pay to performance and time on the job -- give a raise after 30 days if performance is good.

  - Pay the type of benefit that is especially valuable to contingent workers -- partial tuition reimbursement if contingent workers are young.

  - Offer access to regular core employment -- then turnover of contingent labor is offset by accession of proven core employees.

As is so often true, the first-line supervisor is a key player. Whatever the company rules are, attentive and considerate treatment from a supervisor makes the difference.

Managing Flexibility - 3

Flexibility from the Core

Contingent labor isn't the only source of flexibility. Changes in labor hours hired can also be obtained from core employees. Options aside from traditional overtime and layoffs are available. For example:

> Include part-time employees in the regular core workforce who agree to vary their weekly hours of work within pre-set limits

> Use work-sharing for full-time employees who agree as a group to cut hours of work at slack times

> Introduce a voluntary reduced work time option for individual full-time employees who with supervisory approval temporarily cut back their work hours

> Write annual work year contracts for employees who agree to distribute a pre-set total number of hours of work across the year according to demand

A different type of flexibility -- functional flexibility -- can also help meet company needs to cope with fluctuating workloads. If employees are multi-skilled and know how to do several jobs, then moving employees among jobs helps meet peak demands for labor unless all jobs experience the same peaks.

The Equity Issue

Successful managers know that in the long run, good businesses manage their people well. For contingent workers, good management includes equitable treatment. To manage contingent workers equitably, the first guideline is that *equity is not the same as equality*. Equity does not necessarily mean the same pay and benefits for contingent and core employees. For example, if contingent workers are young people, maybe paying them higher wages and lower benefits (such as no pension) meets their preference for current income at the sacrifice of future income. The key to equity is fair treatment that responds to individual needs.

The second equity guideline asks *how many people want contingent work and who are they*? Is the supply of people who want contingent work as big as company demand for them? Do contingent workers have decent alternatives for employment? Do they have as many resources of skill and experience as core employees? If the answers to these questions are 'no' as popularly believed, then low wages, no benefits, no training, and no promotion for contingent workers are inequitable and worsen the labor market for business in the future and exacerbate social problems.

Figure 3

SUMMARY OF COST EFFECTIVENESS OF CONTINGENT LABOR AT WORK UNITS IN THREE COMPANIES

VARIABLE	COMPANY A: FINANCIAL INSTITUTION	COMPANY B: FINANCIAL INSTITUTION	COMPANY C: ELECTRONICS MANUFACTURE
Type of job	Data entry	Data entry	Electronics assembly
Contingent workers	Hourly part-time employees	Part-time agency temporaries	Full-time agency temporaries
Wage rate — core:	$7.07 per hour + incentive	$7.97 per hour	$6.92 per hour
Wage rate — contingent:	$6.25 per hour raised to $7.77 after training + incentive	$7.00 per hour raised to $7.25 to $7.75 based on merit	$6.00 per hour raised to $6.50 based on merit
Benefits — core:	27.3% of base wage = $1.93/hour	27% of base wage = $2.15/hour	28.5% of base wage = $1.97/hour
Benefits — contingent:	None for contingents but 10% wage premium paid instead	None for contingents unless provided by agency	None for contingents unless provided by agency
Agency fee	not applicable	27% of hourly wage	24% of hourly wage
Total comp. cost — core:	$9.00 per hour	$10.12 per hour	$8.89 per hour
Total comp. cost — contingent:	$7.77 per hour -- 13.7% or $1.23 less than core	$8.88 per hour -- 12% or $1.24 less than core	$7.44 per hour -- 16% or $1.45 less than core
Productivity	Contingent less than core by 7.9% in unit studied	Contingent less than core by 7% controlling for shift and hours	Unknown; not appraised
Unit labor cost	Lower for contingents by 5.8% or $0.52 per hour in unit studied	Lower for contingents by 5% in one unit	Lower for contingents by 16% if productivity is equal
Training cost for contingents	$910 to $970 per new contingent worker (200 hours of classroom and 6 months of on-the-job)	$260 per new contingent worker (4 weeks of on-the-jub training)	$2390 per new contingent worker (3½ days of classroom, 6 weeks of on-the-job, 5½ days of continuing)
Training payback	About 20 months	About 4 to 6 months	Nearly 12 months
Length of service	14 months in unit studied	7 months in one unit	8 months; 12 months is maximum
Is training cost recovered?	No	Yes	No
Is contingent labor cost effective?	No - unit labor cost lower but unrecovered training cost outweighs	Yes - unit labor cost is lower and training costs are recovered	No - unit labor cost lower but unrecovered training cost outweighs

Senator METZENBAUM. Thank you very much, Ms. Axel.

Our next witness is Mitchell S. Fromstein, of Milwaukee, president and chief executive officer of Manpower, Inc.

Mr. FROMSTEIN. Thank you, Senator.

Manpower Incorporated is a worldwide organization that provides staffing services to business firms and Government organizations in 38 countries. Our firm has been in business for 45 years, and we operate 900 field office locations in the United States, and an equal number abroad.

I will be brief in my remarks this morning, but I would like to refer you to an expanded testimony I submitted to Congressman Lantos and his employment and housing subcommittee in May of 1988, as that testimony is completely applicable in today's environment as well.

We are essentially a private enterprise version of the U.S. Employment Service and its many European counterparts which are operated and funded by governments. The principal difference is that in our relationship with workers, we act fully as the legal employer and offer professional skills assessment and training to enhance the marketability of the individual.

When one considers the problems related to contingency as raised by this subcommittee, I believe our company should not be viewed as either a cause or a contributor to those problems. Indeed, we are in many ways a solution to the problems, as we do transition contingent workers to permanent employment status in significant and currently increasing numbers.

While we cannot provide job security in this process, we do provide income at prevailing labor market pay rates, a responsible role as employer, and a protective benefits package for those who work for us on an extended basis, whether it be by choice or by necessity.

As empirical support for the nature of our role, in 1992 we employed over 500,000 individuals in the U.S. for some period of time. This included students during vacation periods, housewives seeking second incomes, job seekers made redundant by downsizing, retired individuals, and first-time labor market entrants.

On an average working day, we employed approximately 100,000 people. During that same year, we transitioned approximately 150,000 individuals into permanent jobs, and provided 30,000 weeks of paid vacation and 120,000 paid holidays to those who were with us on an extended basis. We provided State of the art office automation skill training to 130,000 people who would otherwise be unemployed or working at lower skill and wage levels.

All of our employees are, of course, covered by the mandated benefits of Social Security, workers compensation, and unemployment compensation insurance. We do not employ people as independent contractors for deployment on work assignments, and we have no "home workers."

Our safety record shows no differences from that of our customers' experience with their permanent work force, as we have a carefully designed and implemented program of safety training customized for each workplace.

The quality and productivity of our workers has met the highest standards of expectation of the companies we serve. We have applied unique and proprietary human resources technology to the

process of matching our workers to the customers' permanent staff with whom they work.

On the customer side, over 90 percent of the use of our services was to provide work force size flexibility driven primarily by seasonal or cyclical elements.

Our skill assessment and training programs are made available to all applicants, with no charges made to the worker and no minimum qualifying period required. In 1992, our training expenditures for our work force exceeded the percentage of related payroll which is being recommended by the new Secretary of Labor, and all of this effort and resource was applied at nonsupervisory levels.

You will be interested to know that our work force contains the widest elements of diversity, including major representations of minority groups in terms of age, sex, and race, as we are able to provide work opportunities which are not easily available to these groups in the traditional labor market process.

We have just completed the formation of a nationwide minority-owned staffing enterprise which will specialize in the transition of minority workers to permanent employment with the aid of our technologies, processes, and network contacts.

In summary, we are providing work force flexibility to the Nation's business community and a rapid deployment channel for people who seek temporary work, skill development, or permanent job exposure.

To understand how this process functions effectively, one must experience it, and I invite the Senators and the subcommittee staff to visit our offices here in Washington, or in your home States. You will, I believe, gain a better understanding of how this process differs massively from the part-time worker phenomenon with which you are concerned.

I will be happy to answer any questions you may have.

Senator METZENBAUM. Thank you very much, Mr. Fromstein.

Our next and last witness is Mr. John R. Heneisen, or Rome, GA, dean of student work at Berry College, in Mount Berry, GA, and former president of the National Association of Student Employment Administrators.

Please proceed, Mr. Heneisen.

Mr. HENEISEN. Thank you, Senator.

I appreciate the opportunity to speak to you this morning on behalf of over 8 million postsecondary education students who work part-time during the school year and hold temporary summer jobs in order to pay for a college education.

Today I am representing the National Association of Student Employment Administrators. NASEA has over 700 members who are college administrators dedicated to helping students obtain part-time and temporary employment while enrolled in colleges across the Nation. I am also representing Berry College, a liberal arts college of over 1,700 students. Martha Berry, the founder of the school, believed that education should be of the head, the heart and the hands.

I have worked for 28 years as a college administrator, with most of that time spent administering student employment and other financial aid programs. My doctoral dissertation is a study of the relationship of part-time work to academic success and persistence in

college. Like most other studies, I found that students who work part-time tend to do better academically and are more likely to complete their education than those who do not work. This is true without regard to the family socioeconomic status.

The impact of proposals which would adversely affect the ability of college students to obtain employment while enrolled in college should be very carefully considered. Recent U.S. Department of Labor statistics indicate that 63 percent of the 13.3 million college students in America work while attending college. Even using a conservative estimate of an average of $3,000 per year in earnings, students are providing nearly $24 billion of their own college costs. Federal grants for education are declining, and at the same time, the debt burden for students is dramatically increasing. We need to be encouraging students to work instead of making it more difficult for them to find part-time and temporary employment.

We believe that it is important for students to learn how to work while in school. Such work experiences help students make the transition from school to work. Employers of our graduates at Berry College us that the work experience is often as important as the degree itself. All of our graduates have obtained documented work experience before graduating from Berry.

Across the Nation, student employment programs play a vital role in education. Schools such as the University of Minnesota, Princeton University, the University of Cincinnati, Berea College, and Northeastern University have put a strong emphasis on work as an important part of their educational program. Furthermore, the financial contribution to the United States economy of students and others who work part-time exceeds $140 billion per year.

I want to share with you a true story about a 17-year-old high school senior. With a family of six, his father left a job as an auto body repairman to go into the seminary. He was just getting started in the ministry as the young man was starting college. The only option for affording a college degree was to find a college that would give a small scholarship and a part-time job. He worked a variety of jobs during the summers and school year and was able to earn most of his way through school. Without the work, he probably would not have been able to afford a college education.

That young man went on to get doctorate from the University of Cincinnati and has spent his life helping others get their college education. The person I have just described is me.

There are millions of young people today who depend on part-time and temporary work to make it possible to complete their education and to make the important school-to-workplace transition. As you consider proposals that may impact on this vital source of financial aid and learning, please do not make changes that would discourage employers from providing jobs for those seeking higher education.

I would like to make one other remark, that I cannot condone and my colleagues could not condone the kinds of things that cause some of the problems we have heard about this morning. But we also could not support proposals that would knock out legitimate part-time jobs being provided by legitimate employers of part-time employees.

Thank you.

Senator METZENBAUM. Thank you very much, Mr. Heneisen.

I feel that I am an expert on the subject to which you just addressed yourself. I had a high-paying job when I went to college. The Government paid me at the top of the scale—either 30 cents, 40 cents, or 50 cents an hour—as an NYA employee. I think I had about six or eight jobs, being a Fuller Brush salesman, a Saturday Evening Post boy sales supervisor, a razor blade salesperson, a flower salesman—you name it, I did it during those days. And I certainly don't think that this committee has any thought of depriving young people going to school of being able to pay part of their way or all of their way in attending college. That is not the thrust of our concern. The thrust of our concern is the dramatic growth in temporary and part-time workers and what it is doing to the entire economic picture in this country.

In a 1991 report, the GAO concluded that "The current public and private system of providing workers with basic benefits and income protections was designed primarily to meet the needs of full-time workers and does not adequately address the needs of many nontraditional workers."

My question is this. Do any of you have any idea as to what legislative options, if any, we should consider in order to address this problem?

Dr. Appelbaum.

Ms. APPELBAUM. Yes. I have a couple of suggestions, and mine are mainly geared to the idea of ruling out the choice of a low wage path for employers—and not, of course, ruling out the use of part-time or temporary workers.

You have on your chart the fact that the average hourly earnings of part-time workers are far below those of full-time workers. Even if we compare workers in similar occupations and with similar skills, we find that there is a consistent, 10 to 15 percent differential against part-time workers, making them a cheaper labor force for some employers. And of course, one possibility, then, is to amend the Civil Rights Act to forbid discrimination against workers on the basis of their work status. That is, an hour of work should be paid the value of that hour of work and should not be determined by the status of the worker.

There are, as I indicate in my written testimony, very many countries where this is already the law, and recently the European Court of Justice ruled that paying a differential wage rate to part-time workers compared to full-time workers was discrimination on the grounds that it overwhelmingly had a negative effect on women workers. They ruled that it was indirect discrimination against women.

So it will soon be the rule of law in the European Community.

The minimum wage is another thing that we could do something about. In the 1960's and 1970's, the minimum wage provided a worker with a wage equal to one-half the average hourly wage of a nonsupervisory worker in the United States. Over the period of the 1980's, that has fallen considerably. Today it is at 40 percent. Part of what is driving that increase in part-time and temporary work is the increasing spread in the wage of part-time workers relative to full-time. Only 5 percent of all workers in the United

States are minimum wage workers. One-quarter of part-time workers earn the minimum wage.

To get back to half of the average wage, we have to get to $5.30 an hour. I think we should raise the minimum wage gradually to $5.30 and hour and then correct it for inflation in the future.

On health, I would just like to say something, since the health care issue is going to come up, and it applies to training as well. The question is going to be how to finance health care for all workers. I suggest that we need something like a payroll tax or a percentage of the payroll going to the premium so that you reduce the incentive for a company to substitute part-time workers at 19 hours a week or 24 hours a week, whatever the cut-off turns out to be, so that they don't have to pay the health insurance for those workers, but those workers will be covered by taxpayers. Whereas if you have a percentage of payroll going to the premium or a percentage of payroll dedicated to training the incumbent workers, you eliminate the incentive for a company to substitute part-time workers for full-time.

Senator METZENBAUM. Mr. Fromstein, what is the average hourly wage of a Manpower employee in this country, across the board?

Mr. FROMSTEIN. I am interested that you asked the question, because as I looked at your profile of the contingent worker this morning, we are very close to the average hourly earnings of the permanent worker, in the blue column. It changes from time to time, but the last time I looked at the actual average numbers, there were somewhere in the $8.50 range.

Senator METZENBAUM. Is that what the employee receives?

Mr. FROMSTEIN. Yes. And that is direct to the employee before taxes, but after all the costs.

Senator METZENBAUM. Are there any health care benefits, vacation pay, holiday pay?

Mr. FROMSTEIN. Yes. As I described in my testimony, we have all three. We do have qualifying elements, which we must have in an organization that is dealing with people who are working for short periods of time, but anybody who is with us on an extended basis—and it was interesting this morning to hear one of the young ladies sort of poke fun at our vacation policy because it requires 1,000 or 1,100 hours of work. But in fact, that is half a year, and we give a full week's vacation for half a year, and if somebody works 1,500 hours, we give a second week of vacation. So we are actually giving 2 weeks of paid vacation for something less than a full-time year.

If people are with us on a continuing basis, and they work before and after a holiday, they get paid for the holiday. And in terms of health care, we have a policy where we pay 50 percent of the premium toward the workers. It needs to have a qualifying period of 300 hours, which is essentially 8 to 10 weeks. Again, that's a lower qualifying period than most people require for permanent employment.

Senator METZENBAUM. Are those health care benefits total coverage?

Mr. FROMSTEIN. Yes. They are just like mine.

Senator METZENBAUM. There is no exception for pre-existing condition or anything of that kind?

Mr. FROMSTEIN. I don't believe there is. I would have to look at it very carefully.

Senator METZENBAUM. Does it include maternal care?

Mr. FROMSTEIN. Yes.

Senator METZENBAUM. What percentage of your workers would you say receive health care benefits?

Mr. FROMSTEIN. I don't have an exact percentage number, but I should tell you this, that roughly 75 to 80 percent of the people who work for us are covered as a dependent under another policy, either a spouse's policy or a parent's policy. So they will opt out of it because they are already covered under a policy. Of those who are not covered and who are with us for an extended period of time, it is open to everyone.

Senator METZENBAUM. I do not know what the facts are, but my staff advises me that the number covered by health care benefits is less than 10 percent. Could you confirm for us in writing what the actual number is?

Mr. FROMSTEIN. Sure.

Senator METZENBAUM. I'd appreciate it. And then, when you figure the number, could you indicate the percentage of what it is, whether it is of the 500,000, the 100,000—in other words, what is the denominator.

Mr. FROMSTEIN. Yes, Senator.

Senator METZENBAUM. OK.

Ms. Crockett, in your opinion, what impact will the current debate on health care reform have on the contingent labor trend? For example, will the trend accelerate if employers have to pay for full-timers' health care, but not for part-timers?

Ms. CROCKETT. We think that if health care reform is applied to most employees that this trend will possibly decrease—you are asking whether we would see a growth in contingent work if health care were available?

Senator METZENBAUM. Yes.

Ms. CROCKETT. We think that the inclusion of health care for more people will probably have an effect on decreasing the numbers of people who become contingent workers, or it may make an employer less inclined to feel the need to continue to increase contingent workers as a part of their work force.

Senator METZENBAUM. At his confirmation hearing, Ms. Crockett, Secretary Reich told us that if America is to be competitive in the world economy, Government must stand ready to encourage the private sector as a whole to treat their work force as their most precious asset. What is the Department of Labor doing to encourage long-term investment in our work force, or to discourage employers from treating workers as a "disposable" asset?

Ms. CROCKETT. The Department of Labor has made a commitment to looking at how the laws that we administer impact on the American worker. And the Bureau of Labor Statistics has redesigned its current population survey to more accurately determine whether workers are working full-time or part-time.

But I will need to get back to you with more specific policies that the Department will undertake to encourage the increase in high wage, high performance jobs.

Senator METZENBAUM. We'd appreciate that, and we will be happy to include it in the record.

[The supplemental response of Ms. Crockett follows:]

What is the Department doing to address the problem raised in your testimony on Contingent Work?

The problems associated with the rise of contingent work are a high priority of the Department of Labor. Secretary Reich is in the process of taking several policy initiatives. For example, in connection with the Vice President's Reinvent Government initiative, the department has created a special Functional Team to look at "unrecognized employment and training issues." One activity of the team is to examine how the Department is serving, or failing to serve different types of contingent workers. Specifically, the team is beginning a cross-agency analysis of the different kinds of "coverage" that exist for contingent workers, (e.g., wage and benefit protection, portable health, pension and other benefits; unemployment insurance; FMLA exclusions; and health and safety protection.)

The Bureau of Labor Statistics is in the process of developing an alternative definition of contingent work based on work experience during the year and attachment to specific employers. This study, a trend analysis, will use the March supplement data from the Current Population Survey for 1979 through 1992.

The Women's Bureau has for some time been studying various aspects of the impact of contingent work on women workers. The most recent funded study, using data from the Survey of Income and Program Participation (SIPP), is "Exploring the Characteristics of Self-Employment and Part-Time Work Among Women." The report is expected to be released during this fiscal year. As a result of research findings, the Bureau in its legislative and regulatory comments, and in its outreach efforts has indicated the need for proportionate benefits for contingent workers.

Ms. Axel, in his book, The Contingent Economy, Richard Baluse, of the National Planning Association, states that many companies using contingent labor have not adequately considered its cost-effectiveness. Do you think that is a fair statement?

Ms. AXEL. Yes, I believe so. I think that employers make many assumptions about contingent labor. They believe it is quick, easy, and therefore cost-effective. And most employers have not analyzed the costs by looking beyond the actual pay differential that they are offering between contingent and full-time or regular employment.

Senator METZENBAUM. Mr. Fromstein, as Manpower has grown over the years, employers called upon your company's services when there was an unexpected surge in need, when there was just a short-term need for workers. But as I see it, there has now been a move beyond that point. How much of your business involves outsourcing arrangements which are becoming sort of a permanent part of the operation of companies?

Mr. FROMSTEIN. It is less than 10 percent, Senator.

Senator METZENBAUM. Do you see it as a gradually increasing trend?

Mr. FROMSTEIN. It is difficult to view in the current environment what is an increasing trend and what isn't, because we are really just getting out of the recession even though it was declared over almost 2 years ago. And we really need to look at whether or not the lag in permanent employment which normally comes in a recovery is going to be absent on a more permanent basis.

We look at taking more responsibility in out-sourcing as an outgrowth of some of the work that we are doing, but we don't see a dramatic increase in the amount of that in the future.

Senator METZENBAUM. In an Ohio newspaper, one of your district managers recently said that Manpower is "always very secretive" about its arrangements. Is there some reason for that?

Mr. FROMSTEIN. No. We are a public company. I suppose we are secretive in terms of what we would like to say to our competitors or have them know, and I suppose we are respecting the individual rights of workers and our customers in terms of not wanting to simply make public the issue of all the arrangements that we have. I wouldn't call it secretive. I think it is good business practice.

Senator METZENBAUM. The Cincinnati Inquirer, with whom I don't agree too often—nor do they agree with me too often—say that your clients don't want to look cheap and heartless. Do you think that's part of the reason?

Mr. FROMSTEIN. I am certainly not aware of that, no. But it is difficult for me to answer that question.

Senator METZENBAUM. It is quite an unusual statement, coming from The Cincinnati Inquirer, I must say.

Mr. Heneisen, I appreciate the need for many college students to work their way through school. As I said, that's what I did. But does that mean we should ignore workers who cannot find full-time work and can't support their families on part-time jobs? Don't we have to do something those workers who deserve the same labor and civil rights protections as full-time workers?

Mr. HENEISEN. Yes, sir, I think we do owe them some support on this, but I think we also need to recognize that there are many millions of these "contingent" workers who choose to be contingent workers, who do not need the benefits, students being one major group of that. And my concern is that as we address the problems that we have talked about today, that we have heard testified about today, that we not go so far that we do inhibit the number of jobs or decrease the number of jobs that are available to legitimate part-time workers. It is going to be a tough balance for you to make as you deliberate these issues.

Senator METZENBAUM. We are about to conclude our hearing, but before we do so, the Chair will point out that I believe this development is an insidious one as far as the free enterprise system is concerned. I think the problem Mr. Hobbs spoke about is particularly insidious because it is destructive of the free enterprise system.

I don't have a legislative solution as to what can be done or should be done, but I know that something has to be done, and the committee and this Chair will be receptive to any ideas that anyone has as to what can or should be done.

A number of interested groups and individuals have submitted written statements that will be included in the record. The record will remain open for additional statements for a period of 2 weeks.

If anyone within range of my voice has some ideas as to what can be done or should be done, the committee is interested, so feel free to be in touch with our staff. We certainly want to think this problem through. I am concerned it may get ahead of us and that when we do get to the point of trying to do something about it, it may have gone so far down the road we will not be able to do anything about it at all.

I don't mean by my comments to be negative concerning the business that your company is involved in, Mr. Fromstein. We appreciate your being with us. I think the problem is bigger than your company. I am sure you would agree that it isn't just your company that is involved; there are many others in the same field. But I con-

sider it a very, very challenging problem to the entire free enterprise system and certainly to workers' rights and to the standard of living in this country.

[Additional material follows:]

ADDITIONAL MATERIAL

STATEMENT OF SUZANNE SMITH

For 21 years New Ways to Work, a nonprofit work resource and research organization based in San Francisco, CA, has been helping individuals and employers to build flexibility into the American workplace. The tool we have used to accomplish this has been to reexamine the way work is scheduled and staffed.

Over the past 3 years we have observed that downsizing has become the flexibility strategy of choice for many companies. They seek "an irreducible core level of permanent employees" in an effort to boost productivity and efficiency. But there is some question as to whether these business goals are being achieved and at what cost to the individuals, the organizations and the society.

Where do all the 'downsized' workers go? In years past, laid-off workers could expect to find another "permanent" job in the same industry or even the same company. Today, most firms are not planning to rehire regular workers when the economy picks up. "Outsourcing", or purchasing, as many services as possible is the objective. Consequently, many, if not most, downsized" employees become part of the contingent work force. As an example, Bank of America has set its goals for branch offices to be 19% full time people, 23% part-time with some benefits and 58% hourly with no benefits. If the rest of the growing service sector of our economy moved to this model, almost 60% of our workers would be working hourly without any benefits and the two-tier work force would be solidly in place in the United States.

Although there is currently no way of knowing how many people are contingent workers and how they may be putting their working lives together around part-time and temporary jobs, we do know that many families' economic support is becoming more fragile. The repercussions from this approach has increased the number of individuals and families without a steady income, without health insurance, and without much hope for some income security in the future.

These growing contingent individuals and families must then be cared for by society rather than being able to be contributors to the common economic good. Currently local governments, states and the Federal Government must find ways to provide for their welfare out of declining revenues and with the burden of the large deficit. This can become an issue of much magnitude economically both now and in the future if these families are not able to become part of the much needed extensively trained work force of the future. We literally could have a brain and an economic drain on all our resources, never mind becoming less than humane in the treatment of our fellow citizens.

There is however, another nagging question: is this growing contingency good for business? When using contingent labor, companies save money on salary and benefits and incur new costs for agency fees, training and turnover—costs that are seldom total led company-wide because they are incurred incrementally with department or project budgets bearing the impact. Although a few firms like Apple Computer have begun to evaluate the actual costs of supplementary contingent employment, most have assumed cost efficiencies that may not be there. (See the research of Dr. Stanley Nollen). Is this organizational restructuring really productive in the long term? Does it have to be this way? Most of our global competitors do not use layoffs to the extent that the U.S. does as a means of responding to drop in revenue. In Japan, for example, profits are cut before jobs and shareholders bear the burden; in Germany work sharing keeps layoffs to a minimum. This mitigates both the social and economic consequences of recessionary periods. Consumer confidence and consumer spending, do not decline to the extent they do in this county because fewer people are unemployed; recessionary periods are shorter and economics more stable.

But what about productivity—the golden carrot that drives the global economy? According to Cooperation and Development (OECD) data, from 1979 through 1990, U.S. business sector productivity rose 0.5% while West Germany's increased 1.6% and Japan's 3%. Thomas A. Steward, writing in Fortune magazine, notes that "American business does a terrific job of increasing productivity by cutting inputs like labor but needs to work on the output side by investing in people and innovation".

It's hard for 'survivors' to be innovative. They're too busy surviving. It's also unlikely that workers will be very committed to the goals of a business that has made 'survivors' or contingent employees out of them. With two out of five companies understaffed according to a 1992 Olsten survey, and a growing number of employers expressing concern over employee skills deficiencies, problems of employee morale, alienation and stress take on a business significance they might not have in less lean times. Global competition is considered a 'drive' of downsizing but our global

competitors in many instances have increased quality and productivity by finding new ways to stabilize employment and emphasize employee retraining and redeployment rather than layoffs.

The American Management Association in its June 1993 study of 836 companies found that:

- Companies that have downsized since January 1987 are nearly as likely to report a decline in productivity as an increase.
- Companies that make cuts tend to do it again, and the results are quite likely to be negative—lower profits and declining worker productivity.
- In every case, the more frequently a company downsized, the worse the after-effects. In most cases, companies paid a heavy price in worker morale.
- Downsizing is not necessarily related to recession; three quarters of the firms that downsized were profitable in the year they made the cuts.
- The 3-year trend line shows that more companies are downsizing in an attempt to increase staff utilization and thus realize productivity gains.
- Early retirement incentives are making a comeback to pre-recessionary levels, and voluntary separation plans continue to increase.
- Fewer companies are embracing policies that "share the pain" and reduce the necessity for layoffs.

And yet these kinds of policies, which include work sharing with short time compensation, voluntary reduced work time and paid and unpaid leaves, can also elicit behavior which avoids side-effects like "survivor syndrome" and "lack of consumer confidence" and engenders commitment and the willingness to work toward longer term gain.

By not becoming more flexible, companies may be overlooking an opportunity to greatly increase employee morale and commitment at a time when cost-effective motivators are hard to come by. A recent Wall Street Journal article noted that flexibility builds incredible loyalty and the "Employees will do almost anything to make flexible schedules succeed."

New work schedules build on employee interest in trading income for more personal time, the desire for more control over their work schedules and the need for some sense of employment security. The quantifiable impacts of work schedules like job sharing, V-Time programs and work sharing on productivity and increased employment opportunity have to do with reducing absenteeism and employee 'down time', with eliminating the need to overstaff, improving employee retention and thus reducing the costs of recruitment and training, and retaining investments already made. In an increasing number of cases firms are using them to fine tune schedules and improve the allocation of human resources as well as minimize turnaround time after a recession, expand employment, and control the use of expensive overtime.

The four new work time models that, if utilized properly, could provide a long range alternative to the overuse of temporary and consultant employees are Job Sharing, V-Time Programs, Work Sharing with or without Short Time Compensation and Annual Hours Contracts. Like a core/ring strategy, these options all reflect a radical reassessment of traditional approaches and attitudes about such aspects of hours systems as the use of regular part-time employment, the value of finding alternatives to layoffs and the need to redesign shift work. They are models which build on employees' needs, integrate both full and part-time work schedules, and embody the concepts of equitable flexibility for both organizations and people.

Most employers today are familiar with the term voluntary job sharing—two people sharing the responsibilities of one full-time job with salary and benefits prorated—as a form of regular part-time. At its best it provides a way to offer part-time work under full-time conditions and in job classifications which are not usually available on a part-time basis. Steelcase, in Grand Rapids, MI, has seen its job sharing program grow from a pilot project for two pricers in 1982 to 74 sharers in 1992. Job sharing is available throughout the whole organization and currently includes district sales managers, clerical teams and hourly jobs. Compensation is prorated between the sharers and they have responsibility for designing their own schedules as long as they both work between 1000 and 1800 hours a year. Benefits to the organization have included lower absenteeism, a positive impact on affirmative action, possibilities for peak period coverage, retaining of valued employees, the availability of wider skills in a position and improved employee morale. Benefits to the employees have included time for family responsibilities, opportunities to pursue additional education and training and more leisure time.

V-Time Programs are a further refinement of the concept of voluntary, regular part-time work. V-Time is short for voluntary reduced work time program. It is a time/income tradeoff arrangement that allows full-time employees to reduce work hours temporarily. A typical V-Time program offers a choice of several kinds of work

time (and pay) reduction, ranging from 5% to 50%. The new schedule remains in force for a specified period—usually 6 months or a year—after which the employee returns to full-time status or re-enrolls. All employee benefits are maintained, although most are prorated. And the employee has a choice of how the time off can be taken—on a regular basis, as a reduced day or week, or in a block of time. New York State has a V-Time project, in addition to a Job Sharing and Regular Part-Time option. The evaluation of the first two years of the V-Time program indicated a savings of $4 million and an increase in fiscal flexibility because managers were able to allot the savings from payroll in various ways.

Work Sharing is an alternative to layoffs in which all or part of an organization's work force temporarily reduces hours and salary in order to reduce operating costs. Today, three basic types of work sharing are used in the U.S.: (1) ad hoc work sharing; (2) work sharing in combination with Short Time Compensation from Unemployment Insurance; and (3) programs which allow or encourage various kinds of voluntary reductions in work time by individual employees. Retaining trained personnel instead of laying people off during an economic downturn is a relatively new concept in the United States. In the early 1970's a few corporations like Hewlett Packard began experimenting with small reductions of work time, instead of reductions in staff, as a means of cutting back expenditures during economic recessions. They found this strategy gave them a decided advantage when business picked up again, both in terms of faster turnaround time and vastly improved employee morale. Slowly, other firms, particularly those in the semiconductor industry, which has more economic peaks and valley than some others, have used ad hoc work sharing. That is, the utilization of a series of across the board small cutbacks in paid work time, for example, closing for a week between Christmas and New Year's, or for one day every two weeks.

In 1978 another kind of work sharing became possible in the United States. California set up a pilot project to experiment with Work Sharing combined with Unemployment Insurance. This European style work sharing, in which workers on reduced schedules receive partial payments from Unemployment Insurance to supplement lost wages, proved very successful. Enabling legislation has since been passed in thirteen more states. The Federal Government issued guidelines to encourage its replication, but little has been done lately to promote this program.

Although little in-depth research has been done to date on the impact that work sharing has had on productivity, representatives from companies using both ad hoc and work sharing with short time compensation from Unemployment Insurance systems generally report a variety of benefits. Primary among them are improved employee morale, the ability to institute cutbacks earlier, and achieve a faster turnaround. Motorola using Arizona's Short Time Compensation provision, was able to reduce its working hours approximately 10 percent. Almost 9,000 employees participated in the program, which was applied uniformly from top management to production and clerical employees. The employees received 10% of what they would have received if totally unemployed from their unemployment insurance account and the company saved $3 million in labor costs and was ready to go return to full time production with a full crew as soon as orders picked-up.

The fourth model which deserves attention is the idea of Annual Hours Contracts. This concept was first articulated in the mid-1970's and pioneered in Swedish and Finnish pulp and paper industry plants. The idea is relative simple: management and labor agree on the number of hours of work which will be needed during a given year and then design a scheduling format. The schedule may be fixed or variable; it may use up all of the hours or some may be held in reserve to be used when the employer and employees decide they are needed. The result is a framework around which worktime can be arranged in whatever units or form the business requires and to which employees will agree. Part-time schedules can be incorporated and allocated to increase coverage during peak periods of activity; training time and longer blocks of both work and leisure time can be designed.

British management consultant Philip Lynch suggests that there are four types of advantage offered by the annual hours approach: (1) the ability to separate employee hours from production hours; (2) the possibility for scheduling more employee hours during peak periods of activity and extend operations where needed; (3) the possibility of redefining 'overtime' and eliminating it as a 'means of production' and (4) creating basic change in the way hours of work are perceived and used. As an example, in one British paper company, ten different annual hours schedules are in operation and there are no workers doing a 'normal' Monday to Friday, five day week. Instead, ten different annual schedules have been designed to cover the specific needs of the production, maintenance, quality control and staff areas. Job creation, lowered per unit labor costs and more efficient scheduling are cited by employers and labor leaders who have developed annual hours contracts.

Because of our concern about the negative impact that current employment trends could have on both the society and the economy, New Ways to Work has worked through education and the promotion of exemplary practices to encourage the equitable use of both flexible scheduling and flexible staffing.

Several things the members of this committee and Congress could do that would help hasten the use of equitable flexible scheduling and staffing are:

1. Pass Representative Pat Schroeder's Part-Time and Temporary Worker Protection Act H.R. 2188 (attached) which provides for:
   - Part-Time workers to receive unemployment while looking for part-time work
   - Requires the Bureau of Labor Statistics to annually survey temporary workers
   - Provides pro rata health and pension benefits for contingent workers working 500 hours a year or more

2. Insurance and pension rights must be available for contingent workers
   - Financial barriers to health care must be removed
   - Health care coverage for all Americans must be equal and equally accessible
   - Reduce the number of years required for vesting in a pension from five to three
   - Insure portability of pension credits from job to job

3. Gather information on the composition and conditions of the contingent work force
   - A count of leased employees should be taken
   - A count of at-home workers should be taken
   - A comprehensive survey should be instituted to determine the extent of contingent workers' coverage by medical plans, pension plans, child care and other major fringe benefits.

4. Determine definitions and standards
   - A national standard needs to be set for what constitutes temporary work
   - The definition of temporary employee should be broader than that encompassed by inclusion in the temporary help supply industry

5. Review statutes governing benefits and income replacement programs to eliminate inequities that discourage employers from offering prorated benefits and equiflex options
   - Change the formula for Social Security and Unemployment Insurance which penalizes employers for employing workers on a regular part-time basis

6. The Federal Government must examine its own policies in this area. It is a major employer of contingent workers. In the 1970s it led the way in promoting flexible scheduling but since the '80s it has de-emphasized these options and increased the use of long term temporary workers, without job protection or benefits.
   - Congress and the administration must cease modelling such contingent practices
   - Call upon the States, municipalities and private business to do the same

We appreciate this committee's efforts in raising the question of how the growing use of contingent labor will affect the economy, employers and workers. It is a question of great importance and these hearings constitute a critical first step toward finding equitable solutions.

Statement of Ellen Bravo

9to5, the National Association of Working Women, has for many years been concerned with the growth in the contingent work force. While we favor flexible work options, we know that these options must be both voluntary and equitable. Right now they are neither.

The contingent work force is a relatively new term for workers with less than full-time permanent positions, whose jobs are contingent upon the needs of the employers. It is made up of approximately 19–20 million part-time workers working less than 35 hours per week, approximately 1–2 million temporary workers working for short periods, often through a temporary help agency, and leased employees who work on contract for independent agencies who rent them out to clients. Altogether they amount to more than 25% of all American workers, or one in four.

I know that you will receive testimony with more extensive facts and figures on the growth in contingent work. I'd like to put some faces to the statistics and talk about why we need what guaranteed protections for these workers.

Let me introduce you to a few of the women we've worked with who've been victims of inequitable work situations as contingent employees:

Linda

Linda Williams was like a lot of women. She got married, had kids, and then her marriage fell apart. She had to get a job. Linda couldn't find a full-lime job, so she worked 45 hours a week at 3 part-time jobs, none of which provided health insurance. At the age of 38, Linda had a heart attack.

I've read her journal—she talked about how she sat in her living room for 3½ hours, sweating so hard it felt like she was in a shower, in excruciating pain, trying to convince herself it was an attack of indigestion because she didn't want to go to the hospital and be turned away for having no insurance, or have to deal with the bills. Later she did go to a doctor and learned she had a heart attack and needed bypass surgery. She finally found a doctor who'd do the surgery but no hospital would take her.

9to5 held a press conference with Linda, and a hospital did agree to admit her. She had the surgery—and owed $60,000. Because she was a fighter and found out about Federal funds for "charity" cases, Linda got the figure reduced. But she still owed $20,000 to 16 medical personnel. When she got better, she got a fulltime job with health insurance, and a second part-time job to pay on the debt. Three years later, the day before her 42nd birthday, Linda died on the job.

I can't say Linda's heart wouldn't have given out anyway. But no one should have had to go through what she did.

Ramona

Ramona was one of many women who wanted to get off welfare. But she could find only a temporary job at $4.35 an hour. As a result, Ramona brought home $43 a week less than welfare. She earned so little she was eligible for Title XIX, except when she worked overtime so she'd have enough to take the kids to the movies. Then she was told she'd earned $42 too much to qualify for Title XIX. Ramona offered to pay the $42 difference, but that's not allowed.

After 10½ months, there were some job openings in her department. She'd revised the filing system and knew most of the jobs. But Ramona wasn't allowed to apply. The jobs were being filled from within—and temps didn't count as employees.

Bernice

Bernice earned $7 an hour and benefits cleaning office buildings as member of an SEIU union local. Then new owners contracted out the cleaning services. Workers were given the choice of being kept on at $4 an hour, no insurance, no union. Bernice retired.

Teresa

For nearly 5 years Teresa worked as a temporary at Allen-Bradley Corp. in Milwaukee. The entire department where she worked was staffed by temps. Teresa made $5.35 an hour, considerably less than the union workers in nearby departments, with no benefits, no sick days, and one week unpaid vacation. (She received a bonus on her anniversary date but it didn't equal a week's pay.)

The magnitude of the problem crystallized for me with a phone call I received from a woman whose boss had been let go and wasn't being replaced. They told her she could work in another position, but now she'd be working for a temporary agency and would have no seniority, no benefits and lower wages. Isn't this illegal, she asked? And I had to tell her no, there's no law that says an employer can't do this.

Guaranteed Protections

The growth of the contingent work force is a result of a conscious business strategy to cheapen the work force. Not so long ago ,employers would simply have hired women and people of color for less money. You can't get away with that anymore. But there are no restrictions on inequity for part-time and temporary workers—where women and people of color tend to be over-represented compared to the total population.

When business justifies these practices to itself, their rationale is clear-cut: Cash in today. Get two part-timers, save lots of money. But to the public, they try to justify these practices as helping out workers: accommodating families, providing mother's hours.

Helping whom? This is reminiscent of a Supreme Court decision at the turn of century striking down the 40-hour work week as an encroachment on "employee's freedom to contract." Later the court changed its decision, saying that freedom to contract doesn't include the freedom to exploit.

Mothers, parents, do want flexibility. But not for less money than the person working next to them who is working full-time. They don't choose to work without sick time, vacation, holidays or insurance.

Many policymakers today are recommending incentives for business to move in the direction of high skill, high wage work. 9to5 supports these efforts. But we have to recognize that right now businesses have many incentives to cheapen the work force. This creates an uneven playing field, so that other businesses have to go along with it even if they would prefer not to. We have to remove those incentives. Create a floor, minimum standards—what I call a bottom line for workers, below which you cannot go. Flexibility is fine, but inequality is not.

Contingent workers share many issues with all workers—the need for value to be restored to a minimum wage, for universal health insurance, pension portability, and so on. In fact, these are important ways to fight poverty. We need these reforms.

The key issue, though, is equity in pay and benefits. Some may work fewer hours, but they work full-time every hour they're there and they need to get same base pay. Families of part-time workers still get sick full-time—they need the same protection as full-time workers, yet many have been excluded from the Family and Medical Leave Act. Temporary workers should be just that—replacing someone temporarily unable to work or performing a short-term project. "Permanent temps" whether in name or in practice should not be allowed.

In fact, the policies 9to5 recommends are good business strategy. We have another choice, to invest in workers, and promote high productivity, high quality work from a high-skilled and high-paid work force. Some businesses have learned this. There are good models. But others aren't taking the low-wage path out of ignorance. For many employers, what governs is what they can get away with. This is determined not by the market but by the bargaining power of their workers. Part-time and temporary workers are the most vulnerable today, with the exception of undocumented workers.

Parity for part-time workers, limitations on the use of temps—these are simple fairness issues for contingent workers. We must make sure they are enacted.

Statement of Americans for Democratic Action, Inc.

Shift from full-time employment breeds insecurity—lower living standards[1]

Background

During the post-war years, and particularly in the period since 1980 the number of full-time permanent workers has been declining as a share of total employment. What accounts for the trend are the steep increases in part-time and temporary work plus the growth in self employment in many low-wage industries.

Private employers have justified their policies of turning to part-time and temporary workers, rather than hiring permanent full-time workers proportedly for greater flexibility. But the practice has contributed to widespread insecurity, and lower standards of living, greater dependency on welfare. At this time it has resulted in higher government outlays, Federal revenues lost through lower wages, and harm to the economy from declines in productivity. The contingent work force does not get skill training, nor develops any loyalty to employers—essential for greater efficiency.

In effect, the heavy reliance on the contingent labor force reflects a management strategy to reduce immediate costs through paying lower wages, deny health protection and other fringe benefits to millions of workers, and weaken union efforts to organize and represent workers.

According to the Bureau of Labor Statistics employment rose some 19 million between 1980 and 1992, but 4.5 million were part-time workers. And of these part-time workers 2.8 million or more than 60% were on part-time jobs involuntarily—that is they wanted full-time jobs but had to settle for part-time work.

A—part-time workers

The number of contingent and temporary workers is estimated at 27–30 million workers or about one of four workers in the Nation today. The largest segment of

[1] The data on employment and related issues for the part-time, contingent, and other groups in the work force are from the Bureau of Labor Statistics. The analysis of impact on economic and social status of the contingent work force, operation of various public programs, and proposals for private and public policies are derived in part from New Policies for the Part-Time and Contingent Workforce (1992) edited by Virginia L. duRivage and published through the Economic Policy Institute.

this work force is 'part-time workers—workers who are on a less than 35 hour a week schedule. In early 1993, there were 21 million part-time workers—14.5 million voluntarily on short-work, and 6.5 million on part-time not by choice, but involuntarily. This group of workers is able, willing, and seeking full-time employment but because of poor economic conditions cannot find such jobs, or are in firms where slack work has led to reduced hours.

Of the 14.5 million voluntarily on part-time about 10 million—or 70%—are in retail trade and various services. In manufacturing, in contrast, only one in twenty-five workers is on part-time. Women 25–54, young workers 16–24, and older workers 55 and over make up 90% of the voluntary part-time work force.

B—Help-supply service industry

A second major component of the contingent/part-time work force is the 1.6 million referred to employers by the help-supply services industry. The help-supply services industry covers the temporary employment agencies which refer workers to firms seeking part-time or full-time workers for short periods. (A very small part of that total are employees of the agencies making the referrals) During the past year or so, of the 1.2 million workers added to payrolls fully 28%—or 340,000—were workers sent from the help-supply service firms—a dramatic indication of how American industry is using part-time workers on a temporary basis to meet their production needs.

More fully reflecting the help supply services industry extent is the total of 6 million workers referred by the industry during the entire year—compared to the 1.6 million figure for such workers employed during the specific week when BLS surveys employment.

Women and younger workers make up a large majority of these contingent workers. While 60% of those referred work on full-time schedules, they typically work for short periods—often because longer assignments would entail the employer providing fringe benefits.

Though the range of occupations for the 340,000 employees added during the past year include technicians, professionals, engineers, and nurses, normally higher paid jobs, the average wage for these workers was $8.30—20% below the average wage for all workers. Also, scarcely 25% of these workers are protected by any health insurance, and only a small proportion receive other fringe benefits.

For all part-time workers—the 21 million group—BLS found that wages and fringe benefits are significantly lower than for their full-time counterparts. On wages, the figures are $5.40 for part-timers, and $8.67 for full-time employees. On fringe benefits the differences are substantial: health benefits—15% of part-time workers are covered, 72% of full-time workers; on sick leave—18% for part-time versus 64% for full-time; and on disability protection the figures are 9% versus 44% for full-time workers. Since 1973, part-time work force wages since have consistently been only 62% of the level for full-time workers.

While differences in industry, occupation and demographics account for part of the spread, as Virginia L. duRivage wrote in the book New Policies for the Part-Time and Contingent Workforce which she edited:

"Yet even when workers are matched by industry, sex and age, a substantial wage difference (about 15 percent) persists between full and part-time workers."

C—Self-employed

The third group of part-time workers are the self employed—who now total about 10 million. Many of this group—13 million—are in agriculture, while other large segments are in construction and services. Men comprise the majority of this group.

A good number of these workers provide various professional, craft and other services to many firms. But a large group work solely for one employer who treats them as independent contractors thereby saving substantial compensation costs such as taxes for unemployment compensation, social security as well as fringe benefits like health insurance, holiday and vacation pay.

According to Virginia L. duRivage, "The Internal Revenue Service estimates that as many as,, 38% of employers deliberately misclassify their employees as "independent contractors. In doing so these employers illegally avoid paying social security and other taxes for these workers—not to mention the considerable savings from failure to provide fringe benefits.

Trends in the number of part-time and contingent workers, 1979–93

The biggest increases during the 1980's among the part-time and contingent work force have been in the groups working part-time for economic reasons—the involuntary part-time employees—and in help supply services.

In 1979, 3.6 million persons were forced to take part-time jobs because of economic reasons or slack work at their place of employment. That number jumped to

over 6 million during the 1982 recession, receded slightly in the following years, moved above 6 million in the 1991 recession, continued its upward trend, in early 1992 reaching a record high of 6.4 million in mid-1993.

Women and part-time work

Women comprise about half the 6.4 million workers on part-time for economic reasons—clearly they want full-time jobs. Among all workers voluntarily on part-time schedules, two-thirds are women, frequently they are forced by family responsibilities to work on such reduced schedules. Lack of adequate child care facilities preclude these women from seeking full-time employment with the advantages in higher pay and fringe benefits.

From a figure of 400,000 in 1982 that industry subgroup has climbed spectacularly—more than quadrupling to over 1.6 million by early 1993. As noted earlier more than 1 of 4 of the newly employed during the past year came from the firms in that industry.

Self employed workers also show an upward trend—although not as steep as the two previous groups. During the 1980's, the BLS estimates that there has been a 20% increase in such workers. In 1992 there were 10 million self employed in all industries, with 8.6 million in nonagricultural occupations, compared to 7 million in 1980.

POLICY RECOMMENDATIONS

Minimum wages

Raising the minimum wage substantially would be a significant first step in improving the low earnings of part-time workers. A part-time worker is six times as likely as a full-time worker to be paid minimum wages. With the current $4.25 per hour minimum wage, earnings even on a full-time basis, are substantially below the poverty level for a family of three. A minimum wage of $5.50 an hour—about half the average wage of all nonagricultural workers, automatically adjusted to keep pace with inflation would be in line with the relationship between the minimum and average wages in earlier years. It would be fairer than the current inequitable, low standard and would substantially benefit the millions of minimum wage workers and many others of the part-time labor force.

Equal pay for comparable work

Lower wages for part-time workers doing comparable work to their full-time counterparts has been amply documented. For example the U.S. Postal Service in the recent past employed part-time workers for some 10% of all jobs and paid them about half the wages paid to permanent workers doing the same job.

In a number of situations where similar practices prevailed, labor unions negotiated contract clauses providing the same pay for part-time and full-time workers on the same job. That equitable arrangement should be extended to all part-time workers.

In addition to an adequate minimum wage, and comparable pay for comparable work for part-time workers a significant increase in the earned income tax credit (as the Clinton administration has proposed) would strengthen economic security for part-time workers.

Health insurance

Besides these direct measures, a series of social policy initiatives would add immeasurably to the well-being of part-time workers. As noted earlier, the BLS reported that only 15.4% of part-time workers received employer-provided health benefits. This is in contrast to 72% full-time workers. Similarly discriminatory treatment applies to sick-leave benefits. While 63.7% full-time workers are covered only 18.2% are covered. A third health benefit—disability insurance—was provided by employers to 9.2% of part-time workers compared to almost five times that proportion (43.2%) of full-time workers.

Major reform of the Nation's health programs being developed by the administration should recognize and address the serious deficiencies in health protection for the part-time workers.

Pensions

Another vital need for part-time workers is coverage for pension benefits. A recent BLS survey of small private firms and State and local governments found that "Insurance and retirement benefits were generally available to fewer than one-tenth of the part-time employees in small establishments."

The findings on insurance coverage from the survey parallel those from the broader analysis of all part-time workers referred to above and point to the tiny portion

of all part-time workers eligible for private pension benefits. Clearly, legislation on private employers pension programs should be restructured on portability, vesting, and related features to remove the severe disadvantage which part-time workers now experience.

At the same time, the Federal social security minimum benefit provisions should be liberalized to take into account the special needs of part-time workers.

Unemployment insurance

Not only do far too many part-time workers bear the burdens of low pay and lack of fringe benefits they lack decent support when they lose their jobs. The operation of the unemployment insurance system deprives them of meaningful protection. Eligibility rules set by States and actions by employers to cut their unemployment insurance costs frequently spell no insurance benefits for laid off part-time workers.

Many States exclude casual or seasonal workers, the self-employed, and independent contractors from unemployment insurance protection. Also, in half the States, eligibility for insurance depends on earnings' tests which the average part-time workers cannot meet. These restrictions and regulations should be amended and liberalized so that part-time workers can receive the same types of jobless support protection as full-time workers.

STATEMENT OF JOHN SWEENEY

My name is John Sweeney and I am the president of the Service Employees International Union (SEIU). With over 1 million service-sector workers in the United States, Canada and Puerto Rico, SEIU is the fourth largest union in the AFL–CIO, and the largest union representing service workers. SEIU members come from both the public and private sectors and include, among others, janitors, nurses, nursing home aides, social service workers, and secretaries. On their behalf, I would like to thank Senator Metzenbaum and the other members of the Subcommittee on Labor for this opportunity to present our views on this important issue.

The workers we are discussing today go by many names. They are "contingent," "part-time," or "assignment" workers. Some are classified as "independent contractors," while others are considered "leased employees." The common thread that unites these workers is that their wages and benefits are often far below that of their full-time counterparts. Many are not covered by health insurance or pensions. They are usually not even entitled to paid vacation or sick leave.

Over the last decade, the number of temporary, part-time, and contract jobs has grown rapidly, especially in the burgeoning service sector. Between 1982 and 1990, temporary-help employment grew 10 times faster than overall employment and such jobs accounted for about two-thirds of new private sector jobs in 1992. Taken together, temporary, contract, and part-time workers make up about 25 percent of the work force.

While managers and economists often extol the virtues of this new "flexible" work force, often commenting on the "freedom" it gives workers, we in SEIU are not convinced. We feel that the expansion of contingent employment poses a number of risks for American workers.

Contingent workers receive lower wages and benefits, little training, few opportunities for promotion and no job security. Because minorities, women, young workers, and older workers are more likely to hold contingent jobs, these trends make our economy less fair, more discriminatory, and more sharply divided between the well-protected and the "disposable" worker.

The use of contingent workers also threatens the job security, wages, and benefits of full-time workers. This has especially been a problem for unionized workers. Time and time again we have seen management expand its use of part-time and temporary workers in order to avoid paying the wages and benefits agreed to during contract negotiations.

An example of what I've just described can be found in the experience of SEIU District 925, which represents 550 office workers at Cuyahoga Community College in Cleveland, OH. When 925 began to organize at Cuyahoga in 1982, there were about 250 full-time workers and 150 part-time workers at the college. (Part-time workers are those who work between 10 and 37.5 hours per week.) The union succeeded in winning recognition for the full-time workers in 1982.

The Cuyahoga administration responded to the success of the union organizing campaign by expanding its hiring of part-time office workers, who were not covered by the union contract. Between 1982 and 1984, the college hired 250 new part-time workers but no new full-time workers. These workers were paid less than the full-time workers and received no health insurance or other benefits.

In 1984, the part-time workers joined their full-time coworkers in bargaining collectively with the college administration. Collective bargaining made it possible for these part-time workers to secure better wages, benefits and working conditions. They were able to obtain, first, an annual cost-of-living adjustment and, most recently, annual wage increases above inflation. The current contract also provides some vacation time for part-time employees who work more than 20 hours a week.

While substantial progress has been made, Cuyahoga's part-time workers still lag far behind their full-time colleagues in a number of areas. Wages for part-time workers are 10 percent below those for full-time workers. Part-time workers receive no sick leave and no health insurance benefits. As a result, these workers and their families could face devastating financial losses if they should become seriously ill.

Another example comes from the experience of SEIU Local 99 which represents 22,000 workers at the Los Angeles Unified School District. Local 99's members include custodians, cafeteria employees, bus drivers, education aides, teacher aides, and special education assistants.

In the years after the California local first organized the school system, management began to create part-time teaching assistant positions outside the bargaining unit. These workers, most of whom were Latinos who could speak English and Spanish well, were assigned to help in the classrooms. They were needed because 60 percent of the students in the Los Angeles school system are Latinos, many of whom have limited knowledge of English.

Meanwhile, the bargaining unit had an equivalent position—the education aide. The aides, 8,000 strong, were also part-timers who helped in the classroom. Although the teaching assistants and the education aides were doing exactly the same work, the assistants were paid lower wages and received no benefits. Over the years, the number of teaching assistants grew to 10,000 as management used these positions to avoid paying the higher wages and benefits of the organized work force.

Local 99 responded to this challenge by mounting an organizing drive among the teaching assistants. After 9 months of intense effort, the teaching assistants were recognized as a separate bargaining unit. Their first contract included medical benefits, a career track for assistants wanting to be teachers, holiday pay and sick leave.

Another problem faced by many contingent and part-time workers has been their misclassification as "independent contractors" by employers. By classifying workers as "contractors," employers avoid paying legally required benefits like social security or workers compensation insurance. The Internal Revenue Service estimates that employers illegally classified 90,000 workers as self-employed contractors last year, costing both Federal and State governments millions of dollars in lost revenue.

One section of our membership that has been particularly victimized by this practice are janitors in commercial office buildings. Despite their ambition and pride, janitors are the most vulnerable of American workers. They are often immigrants unable to speak English, unfamiliar with their legal rights, and unwilling not to seize any opportunity offered. Many are people of color—African-Americans, Latinos, Asian-Americans—historically the victims of job discrimination. Nearly half are women—often single mothers struggling to lift their families out of poverty.

In the building service industry, the independent contractor scam sometimes takes the form of "franchising," where the employer offers a worker the opportunity to buy the right to service part of an office building. The purchase of the contract from the employer requires the janitor to hand over an up-front investment fee as well as an ongoing monthly administrative fee, which is deducted from any payments the janitor receives.

SEIU Local 6 in Seattle, WA knows the franchising scheme only too well. Members of Local 6 are fighting to protect their living standards against competition from fraudulent franchise operators. One of the largest franchise operators in King County is a janitorial company named National Maintenance Contractors (NMC). The company has approximately three hundred "franchises" cleaning over 4 million square feet of office space.

The complaints of the NMC janitors derive from the company's vigilant control over their work and misrepresentation of expected earnings. Three complaints have been repeated throughout our interviews of NMC employees: 1) the assigned accounts did not generate the promised income; 2) NMC imposed charges not stipulated to in advance and 3) NMC breached its agreement with their employees concerning the loss of accounts.

Let me briefly expand on each of these complaints with some examples.

Jae Su Kim purchased a phony franchise valued at $11,100. This franchise should have generated an income of $4,225 per month. Kim's first account, however, produced a mere $1,200—barely half the promised income. After MNC lost the contract to clean the building, Kim was assigned to an account that generated an income of $277 per month. Later, NMC assigned him to work six different jobs simulta-

neously, which generated $1,710 per month—still below the promised income. Because these six jobs or accounts were geographically dispersed, travel between the accounts in a single night proved impossible. Kim was forced to sell his franchise back to NMC.

Kang Ho Choi also indirectly bought a phony NMC franchise from another NMC employee. Several months later NMC billed Choi for $3,000, claiming the franchise had been in debt when he acquired it. Choi paid the disputed bill in monthly installments. NMC charged Choi $100 for waxing floor space and another $100 for inspecting his work. Choi had not requested either one of these services, nor was he aware that NMC could bill him for either service.

NMC also informs its employees that they will be dismissed from an account if the building manager issues three complaints. NMC's janitors are, however, not permitted to talk to the building manager themselves. In addition, NMC sends its staff to inspect their employees' performance. "Franchised" workers are only guaranteed continuous employment if they pay an administrative fee equal to 25 percent of their income.

Won Gun Kim paid the 25 percent phony franchise fee with the NMC assertion that the fee would guarantee him continuous accounts. After NMC lost Kim's first account it failed to offer him another account within 40 miles of his residence. One and a half years later, Kim still had no accounts. I might add that at the same time NMC continued to offer new franchises to unsuspecting victims.

Employers who franchise are able to reduce their labor costs still further because they legally do not have to pay labor-related taxes, including unemployment insurance, workers' compensation, and social security taxes. Nor do they provide benefits such as health care, dental care, or pensions. These savings give them a significant advantage against their competitors. They also leave the janitors without the very basic benefits that cushion workers against economic hardship.

Taxpayers also suffer when employers use independent contracting schemes to lower their labor costs. First, taxes must be raised on legitimate businesses and workers to make up the shortfall caused by illegal, tax-avoiding independent contractor scams. Second, many of the workers victimized by these practices are forced to depend on public benefits and services such as Food Stamps and Medicaid in order to support their families.

What are we to do about the growth in part-time and contingent employment? SEIU's experience at the bargaining table suggests that it is possible to reconcile the desire for flexibility in working hours with the need to protect the rights of part-time employees. Of the 400,000 health care workers who are members of SEIU, for example, roughly a quarter are part-time workers. The contracts that our locals have negotiated for these workers include provisions that guarantee equal pay for equal work and provide for pro-rated benefits.

The Service Employees International Union and its locals will continue to organize contingent workers and to fight for their interest at the bargaining table. But it is also critical that the Congress and the President develop policies to improve the situation of these workers. These policies should be geared toward eliminating the economic incentive to turn full time employment into contingent work.

Useful measures could include mandating pro-rated benefits for part-time and temporary workers by amending ERISA, FLSA, and other appropriate statutes; covering part-time and long-term temporary workers in any minimum wage or benefit legislation; guaranteeing hourly wage parity between full-time and part-time workers performing the same job; and developing "portability" legislation that would allow workers to change jobs without losing accumulated pension, vacation, and other benefits.

Once again, I want to thank Senator Metzenbaum and the other members of the subcommittee for holding this hearing. Your efforts will be instrumental in ensuring that part-time and contingent workers will be able to share in the prosperity of this great Nation.

STATEMENT OF CARLOS SALADRIGAS

I. OVERVIEW OF STAFF LEASING

Staff leasing is foremost and fundamentally an entrepreneurial response to the needs of small businesses. While some people may remember staff leasing as a pension avoidance scheme resulting from the use of leasing arrangements by doctors and other highly paid individuals during the late seventies and early eighties, tax reform measures passed in the mid eighties and Internal Revenue regulations promptly closed that loophole and forced the industry to address economic fundamentals as its "raison d'etre"

Currently the industry is experiencing significant growth. Figure 1, shows the growth of staff leasing arrangements nationally. Florida, the first State to regulate and license the employee leasing industry through a professional board, has been accumulating data on the industry for several years and likewise reports significant growth, both in terms of the number of firms and the number of leased employees.

The term "staff leasing" is truly a misnomer. Staff or personnel outsourcing more accurately describes the nature of staff leasing. Under these arrangements, a business, usually referred to as the "client" outsources a number of employment responsibilities and risks to the leasing company, and the leasing company in turn, discharges these responsibilities in a more cost-effective fashion. Thus, the essence of staff leasing is the rationalization of the inefficiencies inherent in how small businesses discharge their employer responsibilities and risks.

To understand the nature of staff leasing, it is important to appreciate the fact that it is more than just a "service." While staff leasing is indeed a service business, the efficiencies of outsourcing cannot be derived without the underlying assumption of business risks. Consequently, staff leasing cannot be viewed in terms of simply the provision of services or consultancy on personnel and human resource management. Instead, it is the allocation of numerous employer responsibilities and risks to the leasing company that allows the leasing company to manage those costs effectively.

II. OUTSOURCING

Outsourcing is the major economic trend of the nineties. While vertical integration was the "hot" trend of the late sixties and seventies, American businesses have come to realize that vertical integration carries numerous risks. Thus, businesses of all sizes are moving increasingly to outsource functions that have traditionally been performed "in-house."

There are many advantages to outsourcing. First and foremost, outsourcing provides more flexibility to react to changes in economic conditions and market demands, while allowing clients to concentrate on the core activities that constitute their areas of expertise. Additionally, business risk is reduced by limiting investment and passing that risk to the outsourced entity. But perhaps most importantly, is the fact that outsourcing leads to higher quality and lower costs.

This desirable result is obtained through focus, the creation of economies, and the creation of alternatives. Focus or specialization is the primary tool of outsourcing. The outsourced entity concentrates and specializes in a narrow function or role. Thus, it is able to become very good at what it does, and thus become much more productive and efficient than their clients. The outsourced entity also creates economies of scale. It accomplishes this by "pooling" volume of work from numerous clients, thus creating significant efficiencies in organizational and human resources, capital investment and diversification of business risk. Last, the outsourced entity creates alternatives and innovates, as it must do so to remain ever more competitive and cost-effective, whereas, those functions previously housed within the clients, were given low or little attention, thus resulting in few innovations and improvements.

It is this trend toward outsourcing that has given impetus to staff leasing. Staff leasing is part and parcel of the outsourcing trend. The staff leasing company is really a professional employer who assumes employer risks and takes advantage of economies of size to provide the expertise and resources to more effectively manage those risks.

III. MARKET FORCES FUELING STAFF LEASING

The employment relationship in the United States has become increasingly complex and costly. From its simple beginnings in common law, to today's maze of legislation, regulations and requirements, the employment relationship has evolved into a complicated aspect of modern-day business management. Failure to effectively and properly discharge current employer responsibilities can be extremely onerous or even fatal to many businesses.

The increasing complexities and costs burdening the employment relationship are the result of two broad conditions, namely:

- The use of an employment-based system for the provision of health insurance, pensions, and other socially desired benefits;
- The intrusion by government into the employment relationship to achieve desired objectives to redress social ills, such as racial or genderinequality.

The impact of these conditions on the employment cost is dramatic, as can be gleaned from the table below:

Cost Category	Cost Factor
Wages	$1.00
Mandated benefits	.09
Health care	.08
Other benefits	.08
Personnel administration	.08
Lost productivity/theft	.05
Employee litigation	.04
Total	$1.42

Mandated benefits include social security taxes, unemployment insurance and workers' compensation benefits. Of these, workers' compensation costs are on a rampant upward spiral, reflecting, among other causes, the fact that about 50% of workers' compensation costs are for medical services. Health care costs have for years been rising much faster than the rate of inflation, in excess of 20% per year in many of the past few years. Personnel administration costs have risen rapidly since the sixties, reflecting the cost of compliance costs with the multitude of tax regulations and other socially desirable legislation. Lost productivity, employee theft, and substance abuse have been on the rise, reflecting a multitude of economic and social ills plaguing the work force. Last, employee litigation presents a vast and largely unpredictable risk to businesses. In 1989, the average employee lawsuit awarded amounted to $500,000, with many in the million-dollar range. Such an eventuality has the potential to throw most small businesses into bankruptcy proceedings.

Thus, businesses must spend on the average 42 cents for employment related expenses for every dollar of wages paid to employees, an overhead rate on direct labor of 42%! This result is significantly exacerbated in small and mid-sized businesses. While small businesses (defined here as employing less than 100 employees) account for approximately 56.5% of all private employment and have created just about all of the new jobs created over the last 10 years, they find themselves at a great disadvantage in terms of employment costs as demonstrated below:

- It is estimated that small businesses pay about 40% more for employee benefits than their larger counterparts.
- It is estimated that small businesses pay about 30 to 40% more for workers' compensation insurance than large employers.
- It is estimated that employees at small businesses earn only 77% as much as those employed at larger companies.
- Only 14.4% of small businesses had adopted drug testing programs (as of 1988) vs. 44.6% at employers with over 1,000 employees.
- Only 20.9% of small businesses offered employee assistance plans (EAPs) (as of 1988) vs. 73.2% at employers with over 1,000 employees.
- Seventy percent of workers in firms whose employer does not offer health insurance are in companies with 25 or fewer employees.
- Only 33% of employers with nine or less employees offer health insurance benefits, while 77.4% of employers with 10 to 19 employees offer health insurance. In contrast, 99.8% of employers with 1,000 or more employees offer health insurance plans.
- Retirement plan coverage increases dramatically with firm size. In 1988, pension coverage ranged from 12% at firms with less than 25 employees to over 60% at firms with more than 100 employees. According to the Small Business Administration, small businesses considering retirement plans find that the "costs and paperwork resulting from Federal regulations can prove prohibitive . . . Additionally, administrative costs are more likely to result in disproportionately higher per capita costs for small businesses . . .

There are many reasons why small employers are more cost-inefficient than larger ones. Health insurance, for instance, is costlier for small businesses due primarily to a higher insurance risk and higher marketing and administrative costs. However, over time, the ability to contain costs through managed care programs, benefit plan design, and active cost management, have a larger impact on overall costs. Only larger employers have the expertise, staff and resources to remain proactive in cost containment.

In the area of workers' compensation costs the differences are even more dramatic. Insurers generally shun smaller employers, thus forcing them to obtain coverage through State risk pools, thereby paying premiums and surcharges ranging to as much as 50%. Furthermore, as in health insurance, rising costs can only be

contained through effective accident prevention and case management. Very few small employers have the time, resources or expertise to implement safety programs, drug-free workplace policies, and employee assistance programs, proven techniques that can drastically reduce workers' compensation costs. Larger employers, with access to cost-containment resources and employee populations that are statistically credible, can obtain experience-rated insurance plans leading to a substantially lower cost.

Last, employer liability risks can only be reduced through the careful implementation of employment policies and practices that have been thoughtfully crafted to avoid legal pitfalls. For instance, it has been reported that the instance of employee litigation is 50% lower in firms that have established employee grievance procedures, hardly the type of thing found at most small businesses.

Yet, notwithstanding their structural inefficiencies in employment costs, small businesses must compete for talent against larger employers. Almost three quarters of employees surveyed indicated that the benefit package offered is a major factor in making an employment decision. It is therefore, a strategic imperative for small businesses to reduce their employment costs and to offer competitive employee benefits.

IV. BENEFITS OF STAFF LEASING

Staff leasing offers small businesses the opportunity to outsource to a single provider numerous elements of their employer responsibilities and risks, receiving the benefits of professional human resource management, similar to that found in large companies. This arrangement presents numerous advantages to both the client companies, the leased employees and to the government.

The small business clientele of staff leasing firms perceive the following benefits:

- Enhanced cost-effectiveness in the employment relationship.
- Improved ability to attract higher-quality employees.
- Reduced turnover.
- Improved compliance with applicable laws and regulations.
- Safer workplace and increased productivity.
- Professional human resource management.
- One-stop shopping convenience.
- Ability to concentrate on core business.
- Reduced exposure to employee claims.
- Enhanced profitability and competitiveness.

The employees are also major beneficiaries from the leasing arrangement:

- Access to a comprehensive benefit package, which may include health and life insurance, disability insurance, dental plans, 401k plans, child care and flexible spending accounts, and employee assistance plans.
- More affordable benefits, through lower plan costs and a wider range of choices for health care benefits which may include HMOs and other managed care plans.
- Establishment of employee grievance systems.
- Professional human resource management.
- Performance evaluation systems.
- Improved employee communications.
- Establishment of written policies.
- Enhanced employment stability as leasing employer may transfer laid-off employees to other clients.
- Improved workplace safety.
- Extended statutory protection for employer responsibilities assumed by the leasing company.

This last point merits some additional discussion. Congress has, over the last three decades, enacted numerous laws granting special protection to employees, and specifically minorities. These laws, such as COBRA continuation rights, Civil Rights legislation, the ADA, minimum wage laws, etc., impose certain requirements on employers for the protection of the employees. Yet, Congress, mindful of the increasing cost burden it places on employers, has chosen to exempt small businesses from many of these requirements, although in a different fashion and with different thresholds for each legislation. Since small businesses account for over 56% of all private employment, over half of the work force is essentially left without the intended protection. The inadvertent effect of these exemptions has been the creation of a second-class employee in the American work force. Staff leasing firms, as large employers, comply with these requirements thus extending the desired statutory

protection to employees while absorbing the compliance costs in the overall cost-effective discharge of the assumed employer responsibilities.

Finally, the government benefits from staff leasing arrangements in the following manner:

- Reduced tax collection costs. Staff leasing firms often have hundreds of clients. Each of these clients would have to file a separate return for employment taxes. Under staff leasing that is reduced to one return.
- Faster tax collection. Staff leasing firms usually have tax payments that require next day deposits, versus their individual clients that would pay on more infrequent basis.
- Better record keeping. Staff leasing firms generally have more elaborate computer systems and records better able to report taxes and data, with a superior audit trail.
- Improved compliance.

V. THE CONTINGENT WORK FORCE

"A sea of change is taking place in the world of work." With these words, Richard S. Belous begins his well-known book on the contingent economy. A growing number of companies have implemented major changes in their human resources strategies, reducing the traditional work force, and increasing the use of alternative staffing arrangements. These alternative staffing arrangements, which include temporary employment, contract staffing and employee leasing have grown dramatically in the last 10 years. In 1980 "contingent workers" represented 27% of the work force. By 1988 that figure had grown to 30%. The growth in temporary employees alone during that same period reached an astounding 175%.

Just about all sectors of the economy have seen a major increase in the use of contingent employees. Many companies will refer to this as the core-ring strategy, whereby the traditional work force is reduced to a core number of people, surrounded by various rings of contingent employees through various forms of alternative employment arrangements. This trend is not limited to the U.S. In fact, European and Japanese employers also report large increases in the use of contingent employees. In France and Chile, what is known here as staff leasing is a fairly prevalent practice.

There are numerous reasons why companies are increasingly resorting to the use of contingent employees, with operational flexibility being the operative word. The need to remain flexible, competitive and cost-effective in global markets has become a strategic necessity for all firms. Global markets also have the effect to lower prices to world-wide competitive levels, whether we are talking about prices for raw materials, manufactured products, interest rates, or labor.

These changes however, are having a major impact on workers and society, primarily because the U.S. relies primarily on a system of employer-provided benefits, specifically pensions and health insurance. Consequently the two major social costs brought about by the contingent economy are:

- loss of job security
- loss of pensions and health insurance coverage
- lower wages.

For example, contingent workers are generally paid less than permanent or core employees, often by as much as 25% less, and over 30% of part-time workers have no health care coverage.

The broad issue of the contingent work force has sparked lively debate on its merits and costs. That debate is likely to intensify over the next few years. The issue also triggers strong emotional responses with valid arguments, on both sides of the issue, losing credibility because of the emotional loss of reasoning. Employers who adopt contingent work strategies are not the callous, indifferent, job-exporting, fat cats, as they are sometimes portrayed by pro-labor groups. Neither are the contingent workers the happy, fulfilled housewives looking for a little extra income. As in most issues the truth lies somewhere in the middle. What is a fact however, is that the issue will not go away, because it is a key byproduct of the globalization of our economy. Government and business need to work solution to provide the economy with needed labor flexibility while cushioning or minimizing the short-term cost to society and the workers.

It is not the scope of this paper, or its purpose, to discuss or argue the merits of the contingent work force or the policy implications which it carries. Rather, our purpose here is to set the stage so that we may distinguish between employee leasing and the contingent work force. Although employee leasing is certainly an alter-

native employment arrangement, it is not contingent in the sense of entailing loss of permanency, reduced wages or loss of benefits.

VI. STAFF LEASING DISTINGUISHED FROM OTHER ALTERNATIVE STAFFING ARRANGEMENTS

Alternative staffing arrangements constitute a departure from the traditional two-party employment relationship. Alternative staffing arrangements are characterized by a three-way employment relationship where the client or recipient organization perceives the economic benefits of the labor, continues to provide day-to-day control over the work performed, provides the tools and the workplace and sets certain work conditions. The alternative employer or lessor, is at risk for the wages and benefits, controls most aspects of the employment relationship, including the right to hire and fire, and sets many of the conditions for employment. The employee looks to the alternate employer for wages and benefits but understands that his or her services are provided to the client organization. Many of the systems developed over the years to regulate the operation of the employment relationship, or to provide socially desirable benefits to employees, are based on the traditional two-party employment relationship, and are challenged by the numerous emergent forms of alternative staffing arrangements.

In addition to staff leasing, the other various alternative staffing arrangements can be grouped into the following categories:

Temporary Employment

Generally, arrangements where employees are provided for short periods of time to substitute for permanent employees on leave, or to meet peaks or surges in work demand. The question of how long is temporary is impossible to answer. In fact, it is not uncommon to find temporary employees working for the same user for several years.

Contract Staffing

This term is generally used to refer to the provision of more "permanent" temporaries who often stay at their assigned jobs for months or years. In substance, there is very little distinction, if any, between a "contract staffer" and a leased employee in terms of the legal aspects of the employment relationship. This practice is widely used by major U.S. corporations and government, and is a major element of the contingent work force.

Contracted Services

Contracted Services constitute a fast-growing segment of the contingent economy; what Peter Drucker calls the "Functional Economy," where an entire function, traditionally performed by employees, is contracted out to a firm that generally specializes in the provision of such services. Examples include cleaning services, security guards, food service operations, engineering design, and many others. Typically, one salient feature of this type of arrangement is that the contractor assumes responsibility for the end product of the labor provided, though often, the user company dictates how the work is to be done.

Payrolling

Payrolling is an arrangement whereby the payrolling company generally does little more than process the payroll and pay the workers out of the payrolling company's account.

Labor Contractors

Labor contracting typically involves unskilled or agricultural workers, and refers to employer entities that supply such workers on a very short-term basis. Usually these contractors charge the employees a fee for their placement. Labor contracting is radically different from employee leasing, although employee leasing is sometimes referred to as "labor leasing."

Staff leasing shares a rightful place in the growing field of alternative staffing arrangements. Often confused with temporary staffing and other more established staffing alternatives, staff leasing shares some common characteristics with these staffing alternatives. Perhaps it is useful to visualize a number of overlapping circles. Each circle represents a different form of alternative staffing. There are areas where each form of alternative staffing is clearly distinct from the others, but in other areas, where the circles overlap. The distinctions often become diffused. For instance, where a secretary goes on maternity leave and a temporary employee is used to substitute, there is no question that it is clearly a temporary arrangement. Conversely, where a "temporary" employee is retained indefinitely, the distinction with staff leasing becomes more difficult to delineate.

VII. THE EMPLOYMENT RELATIONSHIP UNDER STAFF LEASING

Some people put down staff leasing by arguing that it exists through the creation of an "artificial" employer status, or simply an employer facade, and that other forms of alternative staffing arrangements establish genuine employment relationships, while staff leasing firms do not. Most staff leasing firms substantively assert their employer status, even where the leased employees were formerly employed solely by the client company. Direction and control over the leased workers is generally viewed as a significant determinative factor, but in fact, almost all forms of alternative employment arrangements share such direction and control with their clients.

Yet, while staff leasing generally is characterized by the three-party co-employment relationship found in most other forms of alternative staffing arrangements that make up the contingent work force, it emerges as clearly distinct when we look at its fundamental characteristics and the markets which it serves.

The employment relationship found in staff leasing arrangements is well grounded in common law. Generally speaking, the leasing firm, as a professional employer, assumes the numerous employer responsibilities while the special employer retains others and provides the day-to-day supervision over the work product. Where the leasing company normally employs individuals currently working for the client, a new employment relationship is created between the employees and the leasing firm, and a substantive change in the nature of the employment relationship between the employees and the client is effected. However, contrary to common belief, there need be no termination of the employer relationship between the client and the now-leased employees, although that relationship becomes materially altered when the leasing employer enters the picture.

The determination as to whether, in fact, an employment relationship does exist between the leasing company and the employees should be based on the following sequence of tests:

1) Determine if the worker is an independent contractor relative to the client and the leasing company as a unit. If he or she is, there is no employment relationship established. This test can be accomplished by applying the traditional common law factors. If the worker is not an independent contractor, then the second test must be applied.

2) Determine if the leasing company has created an employment relationship with the leased employees. This can be accomplished by looking to the following factors:

- Has there been solicitation of employment?
- Has there been an offer of employment?
- Is there awareness by the employees of the terms of the employment relationship?
- Are these terms ascertainable?
- Has there been acceptance by the employees of these terms?

3) If an employment relationship was created, the next test is whether the leasing company maintains the relationship. To make such determination the following factors should be evaluated:

- Is there evidence that the leasing company does the things incumbent upon an employer?
- Does the leasing company retain the rights to control consistent with those of general employers?
- Does the leasing employer exercise its right to ensure that the leased employees work in a safe environment?
- Does the leasing employer have and exercise the right to set employment policies?
- Does the leasing employer retain the right to reassign the employee?
- Is the leasing company at risk for profit or losses independent of the client?
- Is the leasing company at risk for wages and benefits regardless of payments from the client?
- Does the leasing company maintain an independent system to handle employee grievances?
- Are the rights to hire and terminate employees held by the leasing company independent of the client?
- Does the leasing company retain a right to access to the workplace consistent with its employer rights?
- Is there evidence that the leasing company actually exercises its employer rights in the context of there being occasions to do so?

The employment relationship under staff leasing thus consists of a triangular arrangement where the responsibilities found in an employment relationship are con-

tractually allocated between the leasing company and the client. Consequently, the determination of who the employer is needs to be made in relation to the purpose at hand based on which party assumed responsibility for the issue in question. Since many statutes, such as the National Labor Relations Act, ERISA, and others have established their own definition of "employer", it is then necessary to apply that specific definition to the leasing arrangement for issues arising under that particular statute. For certain specific statutory purposes, the employee leasing company or the client may be the sole employer, or they both may be found to be an employer under an expansive statutory definition of the employment relationship.

VIII. CONCLUSION

Staff leasing firms are currently providing a valuable benefit to the U.S. economy, mainly by improving the efficiencies and profitability of small businesses. In many ways staff leasing firms have been providing, through market dynamics, many of the benefits sought through healthcare reform. Staff leasing arrangements do not exist for the purpose of disenfranchising workers from their employment benefits, but rather the very opposite of that. Staff leasing has extended health care and other benefits to thousands of American workers who would not otherwise enjoy them.

In this respect staff leasing firms seek to maintain long-term, ongoing relationships between this clients and leased employees, characteristics that makes staff leasing distinct from other alternative employment arrangements that form the elements of the contingent work force.

This fast-growing industry is still a young industry. The staff leasing industry still needs to come to grip with the realities associated with the process of industrial maturity. Increasing regulation, higher entry costs, and capital requirements commensurate with the risks and responsibilities assumed will be inevitable consequences of the process of maturation. Government and industry should cooperate to ensure the orderly development of this valuable industry.

Control rather than obliteration is being increasingly viewed as the solution to the challenges presented by staff leasing. The industry strongly favors regulation. Recently, major regulatory successes brought about through the efforts of the National Staff Leasing Association (NSLA) are having an impact in changing perceptions and attitudes.

The National Staff Leasing Association

This National Staff leasing Association (NSLA) is the recognized trade association for the staff leasing industry. Initially formed in 1984 by a small group of staff leasing firms, the NSLA has since grown to over 220 member firms today. For years, the NSLA has been known as the leading standards-setting organization for the industry, and its members have enjoyed reputation for honest and ethical business practices. The NSLA's strict code of ethics and business conduct is one of the finest examples of industry self-regulation.

As the industry expands and matures, the NSLA's functions will similarly evolve to meet the needs of its member firms. By providing a unified voice, the NSLA plays a crucial role in fostering better understanding of the industry and advocating the interests of its membership before regulatory and legislative bodies. For the NSLA members, many of whom are both colleagues and competitors, shared goals and a united front will best promote the industry's future growth.

In a relatively new industry such as staff leasing, its future is dependent upon its credibility. For this reason the NSLA provides continuing guidance to its member firms on operational issues and ethical principles. Accredited members must go the extra "mile" by providing the NSLA with quarterly verification by independent accountants attesting that its fiscal responsibilities have been properly discharge for payroll taxes and employee benefits.

The NSLA also plays a major role to disseminate information about the industry and its members. The commitment to the publication of this series of position papers is one more example of NSLA's commitment to provide factual information about the industry. In addition the NSLA has published numerous other publications, including a quarterly newsletter, and a monthly bulletin, and holds two major meetings a year dealing with key issues affecting the industry.

STATEMENT OF DAVID BUCNIS

I am a journeyman carpenter. I have been working as a carpenter for 9½ years in Connecticut. I have worked on public and private residential construction, commercial construction and pile driving. The jobs I have worked on have been both

union and nonunion. Currently, I am a member of Carpenters local 210, which is based in Norwalk, CT.

When I first started working at the trade in 1984, I remember some people working as individual subcontractors, mostly in residential construction. These were people who were provided with tools and building materials by their employer, and who were told what to do and how to do it. The employer wouldn't pay social security taxes or unemployment taxes, nor would he pay overtime, withhold Federal income taxes, or provide workers' compensation insurance. Sometimes, people would get 1099 forms.

This practice of workers being treated as individual subcontractors by their employers has been growing. Now it's happening in all levels of construction. Its against the law, because the workers are clearly employees. And it's not fair to employers who abide by the law because they are underbid by the employers who save costs by violating the law.

To battle this problem, I agreed with the union to go on jobs where laws are violated to collect evidence. I pay all of the appropriate taxes, and the union sends my affidavits along with other forms to enforcement agencies. So far, I have provided evidence on two employers.

In September 1992 I worked for A.W. Siscoe Concrete Construction of Onset, MA. They were a subcontractor to Suffolk Construction, also from Massachusetts. I worked for Siscoe at the construction of a nursing home in Stamford, CT. I was hired at $9 an hour in cash—no checks, just cash. I was not given an IRS W–4 form to sign. Taxes were not deducted from my pay. I was supplied with tools and building materials. I had to be at work by 7 a.m., and quitting time was 5 p.m. Every day I was given assignments from Siscoe's foreman. I remember the first week I received my cash pay, I asked my foreman for a receipt so I could declare it to the I.R.S. The foreman told me that I wouldn't get a receipt, and that it was up to me if I wanted to declare the earnings, but as far as Siscoe was concerned I didn't exist. Siscoe didn't send me a 1099 form for 1992. I paid all of the appropriate State and Federal taxes.

I supplied the evidence on Siscoe to the union and I completed an SS8 form for the IRS to determine whether I was an employee or not. The union sent any affidavits and forms to the I.R.S., the Connecticut Workers Compensation Commission, the Connecticut State's Attorney, the Connecticut Department of Revenue Services and the Connecticut Unemployment Compensation Field Audit Unit. As of yet, no action has been taken that I know of to enforce the law.

The second job I took was in October 1992 with Concrete Inc. of Orange, CT. They were a subcontractor to Pace Construction of Bridgeport, CT. We were building an affordable housing complex in Norwalk, CT. The construction was financed by the State of Connecticut. Because there were public funds, it was a prevailing rate job, and the rate for carpenters was $19.90 an hour. I was paid $8 an hour in cash. I was told that work was from 7 am. to 3:30 p.m. and that I wouldn't receive overtime. Also, I was told that the pay-week went from Thursday to Wednesday and I would be paid Friday or Monday. I was never requested to sign a W–4 form. Everyday, I was supplied with tools and building materials, and my work was directed by my foremen.

On the job there was a worker being paid like I was who was also on welfare and food stamps. Also, there were workers on the job who were collecting unemployment. I was told I was foolish for not working and collecting unemployment.

The Norwalk Housing Authority had a clerk of the works on the job. One day, I let him know that I was not being paid the prevailing rate. He did not take any corrective action. On my last day of employment, I told the owner of Concrete, Inc. that I was not being paid properly. He responded that he would continue paying me improperly as long as no one was checking, and I could leave if I didn't like it. I did not get a 1099 form from Concrete, Inc. for 1992. I paid all of the appropriate State and Federal taxes.

Again, I supplied material to the union and I filled out an SS8 form. The material was sent to all of the enforcement agencies. This May, the I.R.S. determined that I was Concrete, Inc.'s employee and not an individual subcontractor. We haven't heard from any other enforcement agencies.

On both of these jobs I worked like I did for any other employer who had classified me as an employee. This practice of illegally classifying employees as subcontractors has got to end. It's driving down working standards, cheating the government out of revenue and forcing employers who abide by the law out of business.

Finally, I have diabetes, so I need a job with medical benefits. Maintaining my insurance is difficult, because employers with benefits who abide by the law are finding it difficult to get jobs, which is making it difficult for me to get employment with them, I have been unemployed 9 months in the last 2 years. I had to go on

COBRA self payments to maintain my insurance. I was on COBRA from October 1992 to April 1993 at $315 a month. This was a difficult sum to pay on unemployment, especially when I had to pay my rent and other bills. Luckily I did maintain my insurance, because in April I ended up in the intensive-care unit for my diabetes due to complications caused by the flu. The bill came to about $7,000. If I didn't have the insurance then, it would have been very difficult, if not impossible, for me to pay the bill right away.

I would impress upon you the need to enforce the law to end these violations, because they are ruining the construction industry and they are having real life-threatening consequences for me.

STATEMENT OF JOE ROY ALLEN, JR.

For the past 45 years I have been a worker, manager, owner and consultant in the women's apparel industry—mainly in the Dallas, TX area.

In the last 15–20 years I have witnessed many American dreams turning into American nightmares. Of the hundreds of legal garment manufacturing firms and their thousands of legal, tax paying employees, only a handful are left. These firms and employees have been replaced by a group of illegal contractors who have disregarded the labor, health and tax laws of our country. Out of the several hundred apparel sewing contractors in the Dallas/Fort Worth area I know of none that are currently in compliance with statutes regarding these activities. To the best of my knowledge, prior to 1975, there were no contractors or manufacturers in this area using illegal home-sewing contractors. In 1993 it is estimated there are 300 to 500 sewing contractors, using 40,000–50,000 home-sewers, engaged in these illegal practices. This is, again, only in the Dallas/Fort Worth region of north Texas. (Because these activities are part of the underground economy, it is impossible to track and provide exact counts as to the number of people involved or the millions of tax dollars lost.)

Today it is virtually impossible to get an item of women's apparel sewn legally in the Dallas/Fort Worth metroplex. These illegal contractors are calling their sewers "independent contractors". These so-called independent contractors are doing the same exact functions that legal factory employees had been doing for the past 5 or 6 decades. The excuse used by many of the people using these illegal contractors is that this is the only way the industry can compete with imported apparel. These same people say that this is a cheaper and more efficient way of manufacturing garments. It may be cheaper, but at what costs?

It is very easy to be cheaper if you do not abide by the laws and requirements, such as Federal minimum wages, Federal laws prohibiting industrial home-work, Child Labor Laws, withholding taxes, matching Social Security taxes, OSHA standards, State and Federal unemployment taxes, etc. On top of this, these illegal contractors do not concern themselves with any employee 'benefits' (health insurance, profit sharing and retirement plans, paid holidays and vacations, etc.). As for the efficiency, some industrial engineers in the apparel industry think these illegal home-sewers are about 50% as efficient per worked person-hour as are legal factory employees.

I understand this independent contractor phenomenon is becoming very dominant in many other industries that had not had this employee misclassification problem before the middle 1970s.

In working with people and firms in my industry, I have seen most of those that chose to play by the rules either go out of business or go bankrupt—including myself.

It is time that our Congress either rescinds (God help us if they do) most of our present labor and tax laws so that we can all operate the way the illegal contractors do—OR—they change the present laws, closing the loopholes, and see that the laws are equitably enforced.

I have put many hours into research of this growing problem of misclassification of workers. Please contact me should you need additional information.

Thank you.

STATEMENT OF DOUGLAS J. BENAD

I am making this statement to let anyone who still cares about the tax paying American garment workers and tax paying American garment contractors, that legitimate garment manufacturing in our country is just about gone. Not only do we have to fight cheap imports that flood our stores, but we have to compete with illegal home sewing contractors in the Dallas, Fort Worth, Killeen, Texas areas who say their sewers are independent contractors. While we play by the rules that include paying minimum wages, income taxes, unemployment taxes, social security

taxes and worker's compensation, the illegal home sewing contractors usually do not. At one time in our area there were seven legal garment manufacturing plants, employing around 75 to 100 people each, paying well above minimum wage, giving bonuses and paid vacations. Now there is only one left—mine. Most of these plants had their work taken away by the illegal home sewing contractors who cut prices not in half, but by more than two-thirds, because they paid by the piece with complete disregard of our labor laws. (Fair Labor Standards Act). The profitability of being in the garment business and abiding by the labor and tax laws of our country is almost nonexistent.

We, the legitimate contractors, cannot continue to lose money by playing by the rules and providing decent paying jobs to our people while home sewers pay little or nothing and in many cases are draining additional revenue from our government by not paying appropriate taxes.

Help from our elected officials is greatly needed to see that our labor and tax laws are enforced.

Thank You.

STATEMENT OF WILLIAM REUBEN STOREY

I William Reuben Storey reside at 405 Hilltop, P.O. Box 516, Wylie, TX, 75098. My Social Security number is 459–38–2002 and my phone number is (214)442–0134.

I grew up in the garment industry. My father, James Reuben Story, was a stock holder in Johnston, Inc., a children's apparel manufacturer in Wylie, TX. My father was Vice President in charge of production in this firm. I started helping my father in the plant when I was 14 years old. I swept floors and was taught how to repair broken sewing machines. At age 16, I was trained to be a cutter of garments. In order to master the craft of cutting garments out of fabric, you must learn how to prepare and read a marker patterns and spread sheets. When this is achieved you take fabric, which comes in rolls, and spread it several layers thick on a table approximately 100 feet long. Then you cut the pieces out with electric knives. The pieces are then ready for assembly into garments.

In my late teens, nearing 20 years old, I became plant manager, responsible for 50–60 employees. I left the plant from 1951–53 and served my country in the U.S. Army. After that tour of duty I returned to Johnston, Inc. which had expanded to seven plants in the Dallas, TX area.

In 1958, I bought the Ennis plant from Johnston, Inc. My company, W.R. Storey Manufacturing Co., Inc., was very prosperous. We grew from 25 employees to 500 employees. We manufactured women's dresses and sportswear. In the early 80's the garment market started deteriorating. I would submit bids on assembly of garments to jobbers who owned a particular style and label and they would say to me you are too high on your bid. I conversed with other contractors and manufacturing employers who were experiencing the same response from the area jobbers. I continued to cut my bids to stay in business and keep my employees working. I had to start selling personal assets to put money in my company, otherwise I could not maintain the business. I had to cut benefits to my employees such as: medical insurance, paid vacations, paid holidays, incentive pay systems, Christmas bonuses and had to close the day care center in Ennis that provided child care for my employees. My employees life style changed considerably. The Ennis, TX community suffered from the loss of revenues. Finally in 1988 I had to close my business. I just couldn't compete with area contractors who I felt were producing garments illegally. A legitimate employer who is in compliance with Federal and State laws cannot compete with contractors who treat their employees as independent contractors, paying them $2 to $3 per garment. These same garments retail from $35 to $65. The most prevalent problem in this area is the contractors who utilize home sewers—contractors distribute the cut pieces to home sewers who assemble the garment in their home and return the completed goods to the contractors who in turn delivers the garments to the jobbers. I feel these contractors do not pay payroll taxes, nor comply with Federal Wage and Hour Standards, or other Federal and State laws. It is impossible to produce these garments at these prices and obey all required laws.

Personally my family and I are suffering from a loss of all of my assets. At the age of sixty, my health has dramatically deteriorated from the stress associated with years of struggle. It also hurts me personally to see my former employees families suffering financially.

After 30 years in business, the inability of my government to enforce the very laws that I faithfully obeyed during my years in business, destroyed me.

STATEMENT OF JANIS B. FLYNN

I, Janis B. Flynn reside at 1400 Shields Dr., Sherman, TX 75090. My phone number is (903) 892–0422.

From late 1969 to 1973 I was employed at Royal Park Fashions, a women's sportswear manufacturer, located at 7777 Hines Place, Dallas, TX. I worked in the office and my position was receptionist. I also handled invoicing of incoming and out going garment orders. I quit in 1973 to care for my child. While working at home I stayed involved with the garment industry through my husband who is a garment salesperson. He has been a garment salesperson since 1964. While at home I assisted him with orders of various styles of garments for a number of companies.

In March 1988 I started my own garment business, J. Flynn Enterprises, located at 1020 S. Gribble St., Sherman, TX 75090. In the language of the industry, J. Flynn Enterprises was a contract sewing facility doing work for a Dallas based jobber called Units. I was President of J. Flynn Enterprises, I managed the company and was responsible for production. My company picked up cut fabric and brought it to my plant for assembly. I employed 40 people. My employees sewed the garment together, inspected the work, pressed the garments and packed them for shipment to Dallas, TX. The garments were distributed by Units, a company owned by J.C. Penneys. I operated my business in compliance with all government standards and regulations. I provided my employees with a good, clean work environment. I even provided air conditioning which is unusual in this industry. This was a work place that I as an employer felt was the American Way.

In the fall of 1992, the Units Co. started cutting back on the amount of garments my company was to assemble. I did not understand the reason because my company's quality was excellent and I met the deadlines on time. Units sales had not dropped excessively, no more than the annual, usual slow period prior to the Christmas season. I started inquiring and conversing with other legal contractors working for Units. They were experiencing the same financial problems that I was encountering. My research allowed me to become knowledgeable as to why I was experiencing financial problems with my company. I was struggling to pay employment taxes, Social Security taxes, Texas Unemployment Compensation. I had to drop my Workers' Compensation Insurance. I operated legally but my competitors were not paying taxes as prescribed by State and Federal laws. Instead of sending me work, Units was sending work to contractors who then distributed the work to home sewers. These contractors did not pay any taxes (treating the employees as independent contractors) or have the overhead expense involved with operating a legitimate business. Therefore, they were able to assemble the garments at a cheaper price. I just could not compete with their bids for the assembly of the garments.

So, on November 15, 1992 I had to close my business. I refused to be a contractor who would operate illegally so I closed my company. It hurts me deeply to see my former employees without jobs. Due to the lack of job opportunity in Grayson County, TX, 70 percent of my former employees are receiving unemployment benefits and welfare assistance. I am currently still struggling to pay debts accumulated from the business, such as building lease payments, utility bills and property taxes. I had to liquidate assets by selling my machinery at a loss.

I have always been a law abiding citizen but it seems that in the garment industry crime pays off and is profitable. These illegal contractors and home sew operations destroyed my image of what the American Dream should be.

STATEMENT OF HAROLD JONES

Since 1982, I have not been able to compete in the Dallas market's needle trade. From 1957 through 1982 we (Dantan) were a large supplier of contract labor to this market. During this time, my company employed about 330 people and was shipping $3.5 to 4.5 million of contract work annually to the apparel firms in Dallas. Now we employ 100 people and are not able to get work out of the Dallas area. I am very much aware of the home sewing industry that is now very prevalent in the Dallas area. In order for me to compete with the illegal home sewing contractor, I would have to work by the same rules as they do. It is my understanding the illegal home sewers are not being paid as an employee of any company as my employees are; but as a contract laborer at a predetermined-price by the piece. If this true, I wonder if they abide by the regulations of the Federal and State governments, such as reporting their taxes, and the prohibition of industrial home work in the manufacturing of women's apparel, unemployment taxes, social security taxes, and paying a guaranteed minimum wage as any legitimate business must do.

In order for my company to compete with the illegal home sewing contractors, I would be forced to announce to my employees that I would not guarantee an minimum wage, would not deduct income taxes, would not deduct nor contribute to so-

cial security and Medicare taxes, would not cover them with/contribute to State and Federal unemployment insurance, my worker's would not be covered by worker's compensation insurance, would withdraw all benefits (health insurance, paid vacations, paid holidays, bonuses, etc.). tell them they will pay for the electricity and other utilities used in the manufacturing process, and take my chances of being charged with breaking the labor and tax laws of my country. The illegal home sewing contractors who practice the above form of doing business are breaking the laws of my country.

It is not my intention to break the laws of the land, but I feel that it is time our Congress and appropriate agencies take a very strong look at this problem.

My company and its employees are being punished because we abide by the rules and most of our competitors do not.

MR. THOMAS W. HAWKINS, JR.,
ARCADIA, CA 91007,
June 16, 1993.

Senator HOWARD METZENBAUM,
Subcommittee Chairman,
Senate Labor Committee,
Washington, DC.

DEAR MR. METZENBAUM: I just read your investigation of labor practices on part-time employees in the Los Angles Times newspaper. My name is Thomas W. Hawkins, Jr. and I have been a part-time community college art teacher for 26 years. I am a tenured part-time community college teacher at Rio Hondo College and have taught there for 26 years. My tenure was not granted to me by the State of California for I had to fight for it with a long hard court battle up to the California State Supreme Court with the help of the California Teachers Association and finally after waiting years they granted me tenure, but not equal pay or benefits. The court granted tenure to only those teachers who were hired before November 8, 1967; those teachers hired after that date are classified as Temporary and can be hired or laid off at will by their employers. These are some of the labor practices on part-time teachers in California, there are thousands of part-time teachers who teach one or two classes:

1. They are paid 50% to less than 50% of a full-time teacher and do the same 100% job in the class room as a full time teacher. Full time teachers are required to teach 3 to 5 classes, one faculty meeting a month, serve on hiring committees, who hire part-time teachers and counsel 3 to 6 students a month. Part-time teachers do the same preparation and grading job outside the classroom as full time teachers, but are paid only 45 minutes per class or are paid only for the hourly time on the job, not preparation or grading.

2. They receive no medical benefits to themselves or families. The employers argue since part-time teachers work less than 8 hours on job per week and they feel that they do not have to provide medical benefits that are provided full time teachers. Many have gone without medical care and had to go to the county hospital for care.

3. No dental or eye care benefits. No life insurance policy.

4. Recently, in 1991, part-time teachers have been allowed to join Medicare, pay into Medicare so when they reach 65 years old if they become sick they will have some care. This is their only benefit.

5. Some have Social Security, some do not. Some have sick leave pay.

6. Part-time teachers have to work for 6 years to be vested in the California State Teachers Retirement system to receive any retirement benefits. Many colleges lay off part-time teachers after 3 years.

7. Part-time teachers are not promoted to full time even with the same academic preparation and after years of good job performance, attendance and loyalty. Because it's cheaper for the employer to hire a new part-time teacher. Many college's routinely hire the part-time teacher for the semester and lay off the teacher, when he or she hands in student grades. Part-timers live in a state of fear. 8. Part-time teachers are denied freedom of speech by employers.

THOMAS W. HAWKINS, JR.,
Part-time college teacher.

STATEMENT OF ADVOCATES FOR FLEXIBLE EMPLOYMENT

Mr. Chairman, Advocates for Flexible Employment (AFE) appreciates the opportunity to submit a written statement for your June 15, 1993 hearing entitled "Toward a Disposable Workforce: The Growing Use of 'Contingent Labor'".

AFE is comprised of employers and employees who find part-time, temporary, or seasonal work to be mutually beneficial. We were established to heighten awareness of the value and contribution that part-time, temporary and seasonal jobs contribute to the economy. AFE aims to preserve and protect those jobs. AFE represents a wide spectrum of employers from many industrial and service sectors including retailing, restaurants, and temporary agencies.

Both workers and employers often benefit from flexible work arrangements because these jobs accommodate the personal and lifestyle needs of certain workers and allow employers to respond to customer needs. AFE's primary goal is to protect these important jobs and to insure the continuation and growth of these valuable work arrangements for employers and employees.

The vast majority of those who work part-time choose that option because it affords them numerous advantages. According to the Bureau of Labor Statistics (BLS), approximately 70% of flexible workers choose part-time, temporary or seasonal work voluntarily. Certain segments of our population have a specific interest in and directly benefit from the availability of flexible employment options.

ADVANTAGES OF FLEXIBLE WORK ARRANGEMENTS TO EMPLOYEES

According to the BLS, some of the advantages to employees include:

During the school year, flexible work helps college students earn money to finance their education and helps young people in secondary education to stay in school while supplementing family income.

During the summer, flexible work helps students (and increasingly, teachers) earn additional income between one school year and the next.

Flexible work helps senior citizens supplement retirement benefits.

Flexible hours helps spouses/parents who are seeking to enter the work force for the first time (or re-enter) to earn money and obtain valuable work experience as well as have a flexible work schedule which makes them available to their children or a dependent parent.

For those who have not decided on a specific career path, flexible work arrangements are a good source of work experience and can provide important entry level opportunities for many career fields.

Also, those pursuing their own career—self-employment, the arts, etc.—can afford to do so by working part time which provides steady income while giving them time for other projects.

ADVANTAGES OF FLEXIBLE WORK ARRANGEMENTS TO EMPLOYERS

According to a 1991 "Survey of Benefits for Part-Time Employees" by Hewitt Associates, the top three reasons employers give for offering flexible arrangements are:

It helps businesses attract and retain quality workers who often may not wish to work full-time and would otherwise leave their employment.

It enables employers to help meet customer demands for services or goods at peak times of the day or season.

It accommodates employee work and family needs.

CATEGORIES OF FLEXIBLE EMPLOYMENT

There are three main categories of flexible work options available to employers and employees—part-time, temporary and seasonal. Predominately, AFE members who are employers of part-time, temporary or seasonal workers use such arrangements to supplement their existing work force because of a specific need. A brief description of these three categories follows.

Part-Time Employment

Part-time employment is defined by the BLS as employment of less than 35 hours per week. The nature of many part-time work arrangements gives employers and employees the flexibility to agree on mutually beneficial work schedules. It also can provide vital work experience.

A growing number of professionals are choosing to work part time. According to the Bureau of Labor Statistics, the number of part-time professionals rose to just over 4.1 million in 1991, 125,000 above 1990 figures. An increasing number of retired workers, homemakers, and students are also utilizing flexible work hours to

supplement their income. According to the Association of Part-Time Professionals, approximately 20% of the total number of part-time workers in 1991 were retired workers.

For many employers, particularly those in the service industry, part-time employment is indispensable during certain periods of the day or season. For example, peak times of the day require restaurants to expand their crews to meet the substantial increase in customers.

Many students work to obtain tuition dollars as well as valuable experience. According to a survey conducted by the National Association of Student Employment Administrators (NASEA), approximately 70% of college students (78% in 2 year programs and 62% in 4 year programs) work on- and off-campus during the academic year.[1] In addition, a 1991 survey conducted by the National Association of Manufacturers (NAM), indicated that more than 60% of the companies surveyed felt that part-time on-site work experience is the most important school-work linkage in addressing the labor and skill shortage in their industry. Dr. John R. Heneisen, the dean of student work at Berry College in Georgia, testified at the hearing regarding the benefits of student part-time work. Dr. Heneisen's study showed that students who work part-time are more likely to finish their education and tend to do better in their coursework than those who do not.

Temporary Employment

Similar to part-time employment, temporary employment can serve as a bridge to full-time work by providing valuable experience, skills and contacts. According to a 1989 survey conducted by the National Association of Temporary Services, 80% of temporary employees worked to gain additional income, while between 67%-77% utilized temporary employment to assist them in getting a full-time job, improve skills, or for flexibility. About a third of today's temporary workers work in professional or technical capacities, such as computer programming, accounting, engineering, medical, legal, and para-legal jobs. Teachers are increasingly finding temporary employment a valuable way of supplementing their income during the summer.

Temporary workers enjoy competitive bonuses, vacations, raises, health insurance and life insurance. In order for companies to attract the best workers they offer a range of benefits. They place a high premium on satisfied and productive workers, and providing benefits is one way to insure such satisfaction. As Manpower CEO Mitchell S. Fromstein testified at the hearing, temporary services also provide state-of-the-art training at no cost to employees to upgrade their skills.

Seasonal Employment

Industries that utilize seasonal employment—amusement parks, summer resorts, retail outlets, private/public recreational areas, ski resorts, tax preparers, and summer camps—offer people full-time employment opportunities, i.e. a 35 to 40 hour work week, during a relatively short season. Businesses either completely close down outside of the operating season or continue with a small year-round work force.

While employees generally work seasonally for short periods of time, this is a voluntary option, not a last-resort alternative, as most seasonal employees use the job to gain experience during a transitional period of time. In the amusement park industry, for example, over 85% of the industry's total employment is on the payroll for less than 12 weeks. In that industry, the employees are often high school and college students wishing to help pay tuition, gain spending money and add to their savings between school years. They usually begin after school closes in the early summer and stop working before the summer ends to begin extra-curricular activities or otherwise prepare for school. In the retail sector, many companies offer employment to retirees and students on winter vacation to help staff during the busy holiday season.

Thus seasonal employers are a major source of jobs for one of the most difficult parts of the work force to place—summer youth. As the Washington Post (June 17, 1993) recently reported, the Federal Government hasn't been able to even come close to providing summer jobs for all the youths registering for government summer jobs. In Washington, DC, for example, 19,000 youths were registered for a summer job and the projected enrollment is only 3,000. In Los Angeles, the gap is even larger. Summer work is critical in insuring that young persons engage in productive activities during the periods when they are not in school. The changing economy has also meant that teachers, other professionals, and senior citizens who previously may have taken the summers off have looked to seasonal employment as a way to supplement their income.

---

[1] "Employment and Earnings" (December 1991), pg. 22.

Mr. Chairman, we hope that this testimony has been useful in defining—and exploring the benefits of—part-time, temporary, and seasonal work arrangements. In your examination of these work arrangements, we encourage you to study the value of these jobs to employees, employers, and the economy. Our membership contains every category of part-time, temporary, and seasonal work and we hope that you will call upon us for information on the benefits that flexible work gives to both the worker and the employer. Traditional part-time, temporary, and seasonal work arrangements are critical to those taking part in them and to the economy as a whole.

ILGWU,
NEW YORK, NY 10019,
June 22, 1993

Hon. HOWARD M. METZENBAUM,
Chairman, Subcommittee on Labor,
U.S. Senate,
Washington, DC 20510.

DEAR MR. CHAIRMAN: In behalf of the 220,000 members of the International Ladies Garment Workers' Union ("ILGWU") employed in the production of women's and children's apparel, I commend the subcommittee for its hearings on June 15, 1993, to explore the implications for fair labor standards, unemployment compensation, social security, and fair competition of the increasing use of "contingent labor."

The ILGWU has long been concerned over homework in women's apparel and related industries, a form of contingent labor that has been adversely affecting workers and law-abiding employers throughout this century. I write this letter to urge the subcommittee to include disadvantaged illegal homeworkers as well as lawful employers in these apparel industries among those persons who need protection from the predatory employment practices which are the focus of your current hearings.

Homework in the apparel industries has always meant substandard labor conditions. As the Department of Labor found in 1942, after hearings and study respecting the women's apparel industry, homework "furnish[ed] a ready means of circumventing or evading the minimum wage" and spawned "wholesale violation[s] of record-keeping . . . requirements of the [Fair Labor Standards] Act.[1] These conditions led the Department then to ban homework in women's apparel and six smaller related industries on grounds that it could not enforce the FLSA effectively among homeworkers in absence of a ban. The regulations imposing the ban were upheld by the Supreme Court in Gemsco, Inc. v. Walling, 324 U.S. 244 (1945).

Commencing in 1984, the Department, over the opposition of the ILGWU and many interested employers, employer organizations, unions, and other individuals and groups, see ILGWU v. Donovan, 722 F.2d 795 (D.C. Cir. 1983), and ILGWU v. Dole, 729 F. Supp. 877 (D.D.C. 1989), rescinded the ban on homework first in knitted outerwear and thereafter in five other apparel-related industries, and authorized employers qualifying for and obtaining a "certificate" to employ homeworkers in States where such employment is lawful. The Department retained the ban on homework in the largest of the seven industries, women's apparel, but in 1988 opened an Advance Rulemaking Proceeding to consider whether to propose lifting that ban. 53 Federal Register 53344. That proceeding remains pending today.

Since the inauguration of the certification system, the ILGWU has closely monitored the effectiveness of the Department's efforts to enforce the FLSA in the seven apparel-related industries through periodic Freedom of Information Act requests. While only a token number of employers, approximately 70 at last count, have sought and obtained certificates authorizing them to employ homeworkers, our monitoring has established that even among the small universe of certified employers, the Department is finding it difficult to achieve full FLSA compliance.

Of more significance, the ILGWU's monitoring program as well as the extensive record made in the Advance Rulemaking Proceeding establish that the conditions which led the Department to restrict homework in the women's apparel industry in the 1940s remain substantially the same today: Employers of homeworkers seldom pay the minimum wage and never pay the required overtime. Child labor is prevalent and work conditions are often neither safe nor healthful. Employees are often carried "off-book" so that wages are not reported and required taxes neither withheld or paid. Required records are almost never maintained, making it difficult, usually impossible, for the Department to recover back wages owed.

---

[1] Wage & Hour Div., U.S. Dept. of Labor, In the Matter of Industrial Homework in the Women's Apparel Industry, Findings and Opinion of the Administrator at 9 (July 9, 1942).

In short, homeworkers in women's apparel are and always have been part of an underground economy, outside the protections of the law, working at the sufferance of their employers. Fear of the loss of their jobs prevents them from claiming the rights the law guarantees to them. They work without complaint at below minimum wages, without overtime pay, without contributions for social security or unemployment compensation, without the protections required by OSHA, and with the participation of illegal child labor. Law-abiding employers suffer from unfair competition fueled by this noncompliance with the law.

The ILGWU has presented these facts to Secretary Reich and urged him to formally close out any carryover consideration being given to initiating proceedings to lift the ban on homework in the women's apparel industry. We ask this subcommittee to communicate the same counsel to Secretary Reich. We also urge you to act to strengthen and support vigorous efforts by the Department of Labor and its Wage and Hour Administration to enforce the restrictions on homework in the apparel industries, to eliminate the deplorable conditions of this underground economy, and to ensure compliance with the FLSA and other laws protecting worker rights in factories and among homeworkers in the garment industry.

In this connection, we note that employers desirous of using homeworkers in the apparel industries have long sought to avoid the requirements of the FLSA, payment of employment taxes, and compliance with other protective laws by claiming that their workers are independent contractors rather than employees. The Department of Labor has consistently opposed such claims and has almost as consistently been supported by the decisions of the Federal courts.

The efforts of employers to find a way around the Department's position, however, continue and recently found support in a decision of the U.S. Court of Appeals for the Eighth Circuit. On March 12, 1993, that Court in Reich v. ConAgra. Inc., dba Northwest Fabrics & Crafts, 987 F.2d 1357, held that Northwest employees who chose to make model garments at home after work for display in the fabric stores of their employer had not been shown by the Secretary to be "employees" for that purpose. The Court held that the Secretary had failed to demonstrate that the garment making activities were controlled by Northwest or that the sewing primarily benefited Northwest (workers were allowed to keep the garments after they had been displayed), each a prerequisite to an employer-employee relationship. Accordingly, the Court held that the homework was not covered by the FLSA and that Northwest had lawfully refused to keep records of the time its employees spent making these model garments at home. I enclose herewith a copy of the Court's decision.

The ILGWU urges the subcommittee to support the Secretary of Labor's conclusion that an employer-employee relationship exists between makers of model garments at home and the employer who commissions and displays those garments. The Secretary should be encouraged to present his position to another Circuit Court and to seek Supreme Court review in the event of a conflict in rulings. In the event the Secretary's position is not sustained, this subcommittee should, we suggest, pursue corrective legislation.

In conclusion, the ILGWU urges the subcommittee to recognize homework in the women's apparel industry as another manifestation of contingent labor which undercuts the rights of lawful workers, generates unfair competition to lawful employers, and leaves the homeworkers without the protections of the law in deplorable sweatshop conditions.

Very truly yours,

JAY MAZUR,
President.

NATIONAL ASSOCIATION OF TEMPORARY SERVICES,
ALEXANDRIA, VA 22314,
June 28, 1993.

HON. HOWARD M. METZENBAUM
Chairman, Subcommittee on Labor,
U.S. Senate,
Washington, DC 20510.

DEAR MR. CHAIRMAN: This statement is submitted on behalf of the National Association of Temporary Services (NATS) which represents over 1,000 temporary help and staffing service firms throughout the United Stares and approximately 85% of the industry's total payroll. Temporary work comprises about 1 percent of total nonagricultural employment and is by far the smallest component of the so-called "contingent" work force which includes a variety of employment arrangements, including

part-time workers, "leased" workers, and independent contractors. We request that a copy of this letter and attachments be included in the record of the subcommittee's June 15, 1993, hearing on the "contingent" work force.

Temporary Help Provides a Critical "Safety Net" During Work Force Transitions

Temporary work has for over 50 years been a way for individuals with special employment needs to find meaningful and profitable work. Parents (in most cases women) with small children who cannot or do not wish to commit to full-time employment, people looking for first time work who want to "test the waters", older workers looking to stay active and supplement their incomes, and students needing summer work all look to temporary help companies to meet their needs. These still make up the great majority of temporary employees.

In today's economic environment, however, temporary help companies are assuming a new and vital role. For displaced employees, temporary work can provide a critical safety net that offers income and other benefits, unemployment insurance and workers compensation protection, until regular, full-time work can be found. Moreover, these jobs themselves often are a bridge to regular, full-time employment by giving workers an opportunity to gain new skills (e.g., computer training) and experience with a variety of potential employers.

A painful restructuring of the American work force is undeniably taking place. But as the recent Time magazine article "The Temping of America" (March 29, 1993) pointed out, there are "good economic reasons" for this which are related to the need for American companies to stay globally competitive. Congress should encourage the positive intermediary role temporary help employers are playing to help ease the burden on individuals during this period of restructuring, and should examine carefully any proposed "solutions," no matter how well-intentioned, designed to deal with the dislocations. The danger is that new regulations which increase the cost of temporary help and other flexible staffing options—e.g., by mandating benefits for temporary workers or requiring wage parity with full-time workers—will not create more full-time jobs but almost certainly will result in fewer temporary ones. Without the temporary work "safety net," many more people would have no job at all.

Temporary Employees are Fully Protected by the Nation's Civil Rights and Labor Laws

Some of the testimony at the hearing suggested that temporary workers are often unprotected by laws intended to protect workers. While some laws may not cover employees working less than a minimum number of hours per week, temporary employees almost always work full-time when they do work and hence are fully protected.

As employers, temporary help companies must comply with all State and Federal laws enacted to protect workers. These include all of the civil rights laws, OSHA, the National Labor Relations Act, the minimum wage and overtime laws, and the recently enacted family leave law, to name just a few. Moreover, because the business using temporary help generally is also held to be an employer, the worker has recourse against both the temporary help employer and the employer for whom the work is performed.

We are in complete agreement with Mr. Michael D. Hobbs of Connecticut, who testified at the hearing regarding the misclassification of employees as "independent contractors" and how this practice is being used to the disadvantage of employees in the construction industry. In fact the problem is far more widespread. As responsible employers, the Nation's temporary help companies deplore the misclassification of workers. It harms the worker, significantly reduces tax revenues, and places at a major competitive disadvantage the responsible firm that pays social security, withholds income taxes, and provides unemployment insurance and workers' compensation. NATS strongly supports legislation to stop these abuses.

Wages and Benefits

Wage rates of temporary employees vary widely, but generally are competitive with wages paid to their regular, full-time counterparts in the same locale. Nationally, NATS estimates that average temporary wage rates are currently in the $8 per hour range. While temporary workers historically have shown a strong preference for cash income rather than fringe benefits, most temporary employees have access to a full range of benefits. These typically include vacation and holiday pay, incentive bonuses of various kinds, and health insurance plans (including a national plan offered through NATS). Some temporary help firms even offer pension plans for longer-term workers.

Most temporary employees already have health coverage through a spouse or parent. In addition, a significant number (about one-third) are in between full-time jobs

for relatively short periods of time and are covered under a prior employer's health plan because of COBRA. Of the temporaries who are not covered, most are young and healthy who do without coverage as a matter of choice, thereby maximizing their cash income. For these reasons, and because of their short tenure, temporary employee participation in temporary help company health plans tends to be very low. For the same reasons, pension plan participation by temporaries also is very low.

NATS supports health care reform legislation that would increase access to health and pension coverage for all workers. For example, we could support many of the proposals being advanced today, although we believe meaningful reform can and should be accomplished without resort to employer mandates. Mandates would create unique administrative and underwriting problems for temporary help employers because of the 500–600% annual turnover of the temporary work force. If mandates were imposed, a workable payment mechanism (e.g., a payroll-based system to allow pro rata payment of any premium contribution) would be essential.

NATS also could support pension reform that creates incentives for individuals to invest and for employers to establish workable plans, even for short-term workers. Current IRS coverage rules make it virtually impossible to establish qualified plans for short-term employees.

The temporary help industry is continually striving to improve its training programs and benefit plans to enhance the experience of working as a temporary employee. Temporary help companies compete vigorously for qualified workers, and this competition will increase as the economy improves. This competitive environment has enabled the temporary help industry to provide meaningful, and often critical, job opportunities to millions of American workers while at the same time providing a vital service to American businesses. We urge Congress to observe the physician's injunction, "first, do no harm," by ensuring that the problems, if any, relating to the "contingent" work force are properly identified and that any solutions offered do not make those problems worse, or create new ones.

Sincerely,

SAMUEL R. SACCO,
Executive Vice President.

PROFESSIONAL SKI INSTRUCTORS OF AMERICA, INC.,
LAKEWOOD, CO 80228,
June 23, 1993.

Hon. Howard Metzenbaum,
U.S. Senate,
Washington, DC 20510.

DEAR SENATOR METZENBAUM: We understand you held a hearing on part-time employment June 15, 1993. I am the Executive Director of the Professional Ski Instructors of America (PSIA) and would like to comment on this issue as it relates to ski teaching.

PSIA is comprised of 21,000 ski instructors and was founded in 1961. As you can understand, because of the seasonal nature of the ski business, over 90% of our members are employed by ski areas in a part-time capacity or for a season. The variety of arrangements ski instructors have made with their ski area employers benefits our membership. Our members support the current system and appreciates the flexibility and benefits part-time employment provides.

We realize it is not your intent to limit job opportunities for those of us that have made satisfactory arrangements with our employers. PSIA simply wants to explain how supportive we are of part-time and seasonal employment opportunities. We would urge you to support flexible job opportunities and discourage you from supporting any legislation which would pose an undue financial burden on our employers, requiring them to limit part-time and seasonal opportunities in any way.

If you or your staff have any further questions regarding PSIA, please do not hesitate to contact me.

Sincerely,

STEPHEN OVER,
Executive Director.

STATEMENT OF CAROL A. DEAN

On behalf of the Building Service Contractors Association International (BSCAI), I wish to take this opportunity to communicate our views on an issue of critical importance to the industry, the classification of workers as independent contractors versus employees and its impact on the use of 'contingent' labor. BSCAI has been active in this debate for over a decade and as recently as 1991 testified before Congress on this issue.

BSCAI is an association of companies predominantly involved in the contracting of janitorial services. BSCAI is incorporated as a 501(c)(6) trade association. We currently have approximately 2,500 member companies throughout the United States and 39 countries around the world. Our headquarters are located at 10201 Lee Highway, Suite 225, Fairfax, Virginia, 22030.

I would like to briefly outline the current situation throughout the United States regarding misclassification of employees as independent contractors, as it relates to our industry. It should be noted at the outset that the majority of the employees in this industry do represent 'contingent' labor. I will also discuss recommendations which BSCAI supports to help improve the current situation.

Terminology. The misclassification issue here in the Congress and at the IRS is discussed in the context of classifying workers as "employees" or "independent contractors." In the building services industry, we refer to this issue as the "illegal subcontracting" problem. While the terminology is somewhat different, the issue is the same

How Companies In Our Industry Do Business. Business in our industry is generally done on a contract bid system. Commercial building owners or commercial tenants solicit bids from potential cleaning companies. Interested companies in that market submit bids. The owner or tenant then accepts the bid which best meets his or her needs.

The Misclassification Problem In Our Industry. Based on our knowledge and experience of the industry, BSCAI believes the typical cleaning company in the building services industry treats its workers as employees, not independent contractors. This is the "prevailing industry practice," certainly when viewed on a national basis. We also believe this to be the case with respect to nearly all individual markets such as metropolitan areas. We have submitted correspondence to the IRS on this point. It is attached and marked Addendum A.

The IRS uses 20 common law factors to determine whether a worker is an "employee" or an "independent contractor." We believe that under any reasonable interpretation of this test, the workers in our industry are "employees."

This misclassification problem occurs in our industry when a firm bidding for a cleaning contract does so based on "subcontracting out" the actual cleaning work to "independent contractors" (the actual workers who do the cleaning).

A firm bidding on this basis has an obvious cost advantage vis-a-vis a firm bidding based on classifying its workers as employees. The firm supposedly "subcontracting out" the work does not have to concern itself with various labor burden costs, such as federal FICA, FUTA, state SUTA, worker's compensation and general liability insurance costs. The "subcontracting" firm also does not have the administrative costs associated with tax compliance for employees. This package of costs vary from state to state, but is generally in the range of twenty to thirty percent of the contract price.

The problem appears to be growing worse as more and more local markets are affected. In some cases such as in Houston and Dallas, the "subcontracting out" practice has become so prevalent that it may - absent action by Congress and/or the IRS - become the "de facto" prevailing industry practice in those markets.

Protecting the Workers. Other witnesses appearing before the subcommittee have testified as to the the harm done to the workers involved in misclassification. We think the harm is fairly obvious.

While a worker so misclassified may gain the temporary advantage of not having his or her wages subject to withholding, that worker loses a number of benefits and protections, such as worker's compensation, unemployment insurance protection, employer contributions to his or her social security, etc.

I would also add that the workers involved, at least in our industry, are often recent immigrants to the United States who are even more subject to potential abuse because of their unfamiliarity with the language and the law.

Clearly, workers lose out when their status is misclassified by an employer.

The federal, state and local governments, I would add, also lose substantial amounts of tax revenue.

The Impact of the Safe Harbor Provisions. We believe it is not a coincidence that our problems with illegal subcontracting began around 1978 when Congress added these provisions to the tax code. While we can't prove this, I think you will agree the coincidence is striking.

The prior tax audit provision in particular has proven to be a problem. It is our understanding that a company which has undergone a prior audit is then protected for the indefinite future from IRS inquiry concerning the classification of that company's workers. We understand this is true even if the audit was for something such as income taxes and not specifically directed to employment taxes.

We believe this provision "rewards" a company misclassifying workers. It is unfair to competing firms. It is bad tax policy. It harms workers. It harms the federal, state and local governments through lost tax revenue. It needs to be eliminated.

Regarding the prevailing industry practice test of the safe harbor provisions, we have been advised that the courts have held that this is to be applied on a market-by-market basis. We would at a minimum like to see this test, if it is to be retained, applied to an industry on a national basis.

Perhaps the biggest negative of Congress' passage of the safe harbor provisions was the very strong signal it sent to the IRS to tread softly in this area. Action by Congress in the 1980s was insufficient to undo the harm done in 1978.

In these tight budget times and concerns for worker security, we believe the Congress should clearly instruct IRS to vigorously enforce the law.

We do our workers no favor if we rob them, through misclassification as independent contractors, of the various protections such as worker's compensation and unemployment insurance which have been erected by the federal and state government over the past half century.

To Summarize the Problem in Our Industry. Workers in our industry traditionally under applicable common law are "employees."

Misclassification creates a competitive problem. Companies bidding against each other have different cost structures because one of those companies is misclasssifying its workers as "independent contractors" rather than "employees."

We believe this to be unfair, contrary to current applicable law, and harmful to the workers themselves.

We believe strongly this is a matter of fundamental fairness. From our perspective, companies acting responsibly and classifying workers - correctly - as employees are put at a competitive disadvantage by firms incorrectly classifying their workers as "independent contractors."

Recommendations.

First. We believe Congress needs to send a very strong signal to the IRS to vigorously enforce the current law. Congress should also ensure that the IRS has the resources and people to get the job done.

Second. We believe the present law, particularly with respect to the safe harbor provisions, needs to be changed. Former Congressman Doug Barnard, Jr. and the Commerce, Consumer, and Monetary Affairs Subcommittee developed seven recommendations on the misclassification issue. These are contained in the November 9, 1990 report entitled, "Tax Administration Problems Involving Independent Contractors." We urge your support of all seven recommendations.

3 9999 05982 583 4

The BSCAI Board of Directors has unanimously supported all seven recommendations. A copy of our February 25, 1991 written statement to Chairman Barnard indicating our support is attached as Addendum B. A copy of the seven recommendations is attached to Addendum C.

Congressman Lantos summed the issue:

> "You are looking at a nationwide pattern of fraud which penalizes the law-abiding citizen, which punishes the law-abiding business, which punishes the law-abiding worker, but benefits the crooks, and the avoiders, and the evaders of their responsibility..."

If this practice of misclassification in the building service contracting industry continues to escalate as it has over the past decade, the repercussions could be devastating to both employers and employees not to mention harmful to state and federal revenue programs. Employers running their operations within the law will be forced to pay their employees less, reduce the number of employees and in some cases go out of business. Both the states and the federal government will lose revenue at a time when they are struggling to balance their budgets.

Yet another concern for the building service contractor is the possible fallout from the President's mandated health care reform proposal where a payroll tax could very well exacerbate the problem of misclassification in the industry even further.

Congress and the Administration have made serious commitments to small business, jobs and government revenue programs. It is our hope that this commitment will result in legislative and/or regulatory initiatives that will allow the law abiding employer and employee to compete on a "level playing field".

The Building Service Contractors Association International welcomes this opportunity to voice the concerns of its members and the importance of enforcing current law with respect to misclassification of employees as independent contractors, as well as outlining possible changes to current law to reduce the problem of misclassification. We trust that out comments will be helpful in the subcommittee's consideration of "misclassification issue" and it affects on one of the largest 'contingent' labor forces in the country today.
We your support in urging your colleagues to take action on these recommendations at the earliest opportunity.

Senator METZENBAUM. With that, this hearing stands adjourned.
[Whereupon, at 11:22 a.m., the subcommittee was adjourned.]

O